Supreme Court, U.S.
FILED
FEB 16 2007
OFFICE OF THE CLERK

(9)

No. 05-85

IN THE

Supreme Court of the United States

POWEREX CORP.,
Petitioner,

v.

RELIANT ENERGY SERVICES, INC., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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February 16, 2007

PETITION FOR A WRIT OF CERTIORARI FILED: JULY 15, 2005
CERTIORARI GRANTED: JANUARY 19, 2007

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

No. CV 02-0990-RHW

RELIANT ENERGY SERVICES, INC., ET AL.,
Plaintiffs,

v.

ARIZONA ELECTRIC POWER COOPERATIVE, INC., ET AL.,
Defendants.

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
5/21/02	1	Notice of Removal from SD Superior Court t/w copy of complaint; Case Number: 4204-00005 and 4204-00006 (to Magistrate Judge Larry A. Burns); Receipt No/Amt of Fee: 82747/$150; jury demand (dkt. clerk) (Entered: 05/21/2002)
		* * * * *
5/23/02	3	Notice by cross-defendant Bonneville Power, cross-defendant Western Area Power (both properly the United States of America) of filing additional ground for removal of civil action as this is a civil action against the US or an agency thereof. thereof. (mam) (Entered: 05/23/2002)
		* * * * *

5/31/02	6	Notice of Motion and Motion by cross-defendant Trans Canada Power to quash service of summons, to dismiss for lack of jurisdiction, [motion(s) referred to Judge Jeffrey T. Miller] motion hrg set for 7/15/02 at 10:30 (dkt clerk) Modified on 06/17/2002 (Entered: 06/03/2002)
5/31/02	7	Declaration of Ralph W. Tarr by cross-defendant Trans Canada Power re motion to quash service of summons [6-1], re motion to dismiss for lack of jurisdiction [6-2] (dkt clerk) (Entered: 06/03/2002)
5/31/02	8	Memorandum of points and authorities by cross-defendant Trans Canada Power in support of motion to quash service of summons [6-1], in support of motion to dismiss for lack of jurisdiction [6-2] (dkt clerk) (Entered: 06/03/2002)

* * * * *

6/12/02	14	Minutes: Enter Order that all judges in the USDC, Southern Dist of CA hereby recuse themselves from the above entitled case; Case reassigned to Judge Robert H. Whaley (dkt clerk) (Entered: 06/13/2002)
6/24/02	15	Notice of Motion and Motion by crs-dfts Arizona Elec Power, Avista Energy Inc, Silicon Valley Power, Idaho Power Company, Northern CA Power, Puget Sound Energy, Sacramento Municipal, Salt River Project, Sierra Pacific, Trans Alta Energy, Tucson Elec Power to dismiss cross-cmp for failure to state a claim [motion referred to Judge Robert H.

		Whaley]; motion hrg set for 9/19/02 at 8:30 (cag) (Entered: 06/26/2002)
6/24/02	16	Memorandum of points and authorities by crs-dfts Arizona Elec Power, Arizona Public Svc, Automated Power, Avista Energy Inc, Silicon Valley Power, Idaho Power Company, Northern CA Power, Puget Sound Energy, Sacramento Municipal, Salt River Project, Sierra Pacific, Trans Alta Energy, Tucson Elec Power in support of motion to dismiss cross-cmp for failure to state a claim [15-1] (cag) (Entered: 06/26/2002)
6/24/02	17	Request for Judicial Notice by crs-dfts Arizona Elec Power, Avista Energy Inc, Silicon Valley Power, Idaho Power Company, Northern CA Power, Puget Sound Energy, Sacramento Municipal, Salt River Project, Sierra Pacific, Trans Alta Energy, Tucson Elec Power motion to dismiss cross-cmp for failure to state a claim [15-1] (cag) (Entered: 06/26/2002)
6/24/02	18	Notice of Suppl Motion and Motion by crsdfts Silicon Valley Power, Northern CA Power, Sacramento Municipal, Salt River Project to dismiss cross-cmp for failure to state a claim [motion referred to Judge Robert H. Whaley]; motion hrg set for 9/19/02 at 8:30 (cag) (Entered: 06/26/2002)
6/24/02	19	Memorandum of points and authorities crsdfts by Silicon Valley Power, Northern CA Power, Sacramento Municipal, Salt River Project in support of motion to dismiss cross-cmp for failure to state a claim [18-1] (cag) (Entered: 06/26/2002)

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6/26/02	21	Amended Notice of Motion and Motion submitted by Arizona Elec Power, Avista Energy Inc, Silicon Valley Power, Idaho Power Company, Northern CA Power, Puget Sound Energy, Sacramento Municipal, Salt River Project, Sierra Pacific, Trans Alta Energy, Tucson Elec Power to dismiss cross complaint for failure to state a claim [motion referred to Judge Robert H. Whaley]; motion hrg set for 8/7/02 at 10:00; NUNC PRO TUNC to 6/25/02 (cag) (Entered: 06/26/2002)
6/26/02	22	Amended Notice of suppl Motion and Motions submitted by Silicon Valley Power, Northern CA Power, Sacramento Municipal, Salt River Project to dismiss cross cmp for failure to state a claim [motion referred to Judge Robert H. Whaley]; motion hrg set for 8/7/02 at 10:00; NUNC PRO TUNC to 6/25/02 (cag) (Entered: 06/26/2002)

* * * * *

7/2/02	24	JOINDER by LA Dept of Water and Power joining suppl motion to dismiss cross cmp for failure to state a claim [22-1], motion to dismiss cross complaint for failure to state a claim [21-1] (cag) (Entered: 07/02/2002)
7/2/02	25	Request for Judicial Notice by LA Dept of Water and Power re joinder [24-1] (cag) (Entered: 07/02/2002)

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7/5/02	27	Notice of Joinder and JOINDER by Pacificorp, Pacificorp Power joining motion to dismiss cross complaint for failure to state a claim [21-1] (cag) (Entered: 07/08/2002)

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7/10/02	31	Notice of Motion and Motion by defendant Sempra Energy Corp, defendant Sempra Energy, defendant Sempra Energy to dismiss the fifth cause of action in plaintiffs' master complaint [motion(s) referred to Judge Robert H. Whaley] motion hrg set for 9/19/02 (bar) (Entered: 07/12/2002)
7/10/02	32	Memorandum of points and authorities by defendant Sempra Energy Corp, defendant Sempra Energy, defendant Sempra Energy in support of motion to dismiss the fifth cause of action in plaintiffs' master complaint [31-1] (bar) (Entered: 07/12/2002)
7/10/02	33	Request for Judicial Notice by defendant Sempra Energy Corp, defendant Sempra Energy, defendant Sempra Energy motion to dismiss the fifth cause of action in plaintiffs' master complaint [31-1] (bar) (Entered: 07/12/2002)

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7/10/02	38	Notice of Motion and Motion by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant Reliant Ener Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater to dismiss master complaint; [motion referred to Judge

Robert H. Whaley]; motion hrg set for 08/07/02 at 9:00 (kaj) (Entered: 07/16/2002)

7/10/02 39 Memorandum of points and authorities by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant Reliant Ener Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater in support of motion to dismiss master complaint [38-1] (kaj) (Entered: 07/16/2002)

7/10/02 40 Request for Judicial Notice by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant Reliant Ener Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater; motion to dismiss master complaint [38-1], motion to strike, motion to stay (kaj) (Entered: 07/16/2002)

7/10/02 41 Declaration of Todd R. Kinnear in support of request for judicial notice for cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant Reliant Ener Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater re motion to dismiss master complaint [38-1] (kaj) (Entered: 07/16/2002)

7/10/02 42 Joint Notice of lodgment of individual complaints by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant Reliant Ener

Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater; motion to dismiss master complaint [38-1], motion to strike, motion to stay (kaj) (Entered: 07/16/2002)

7/10/02 43 Joint Notice of lodgment of FERC orders and other matters subject to dft's request for judicial notice by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant Reliant Ener Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater; motion to dismiss master complaint [38-1], motion to strike, motion to stay (volume 1 of 5 – includes exhs 1-12) (kaj) Modified on 07/16/2002 (Entered: 07/16/2002)

7/10/02 44 Joint Notice of lodgment of FERC orders and other matters subject to dft's request for judicial notice by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant Reliant Ener Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater; motion to dismiss master complaint [38-1], motion to strike, motion to stay (volume 2 of 5 – includes exhs 13-37.2) (kaj) Modified on 07/16/2002 (Entered: 07/16/2002)

7/10/02 45 Joint Notice of lodgment of FERC orders and other matters subject to dft's request for judicial notice by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant

Reliant Ener Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater; motion to dismiss master complaint [38-1], motion to strike, motion to stay (volume 3 of 5 – includes exh 38) (kaj) (Entered: 07/16/2002)

7/10/02 46 Joint Notice of lodgment of FERC orders and other matters subject to dft's request for judicial notice by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant Reliant Ener Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater; motion to dismiss master complaint [38-1], motion to strike, motion to stay (volume 4 of 5 – includes exh 39) (kaj) (Entered: 07/16/2002)

7/10/02 47 Joint Notice of lodgment of FERC orders and other matters subject to dft's request for judicial notice by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant Reliant Ener Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater; motion to dismiss master complaint [38-1], motion to strike, motion to stay (volume 5 of 5 – includes exh 40-49) (kaj) (Entered: 07/16/2002)

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7/12/02 49 JOINDER by Hafslund Energy joining motion to dismiss master complaint [38-1] (cag) (Entered: 07/16/2002)

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7/24/02	54	2nd Amended Motion submitted by Arizona Elec Power, Avista Energy Inc, Silicon Valley Power, Idaho Power Company, Northern CA Power, Puget Sound Energy, Sacramento Municipal, Salt River Project, Sierra Pacific Power, Trans Alta Energy, Tucson Elec Power to dismiss for failure to state a claim [motion referred to Judge Robert H. Whaley]; motion hrg set for 9/19/02 at 8:30; NUNC PRO TUNC to 7/23/02 (cag) (Entered: 07/24/2002)

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7/25/02	58	Notice of Motion and Motion by plaintiff to strike, and/or to sever cross-complaints [motions referred to Judge Robert H. Whaley], motion hrg set for 8/7/02 at 1:00 (cag) (Entered: 07/30/2002)
7/25/02	59	Memorandum of points and authorities by plaintiffs in support of motion to strike [58-1], in support of motion to sever cross-complaints [58-2] (cag) (Entered: 07/30/2002)
7/25/02	60	Declaration of Daniel E. Barenbaum re motion to strike [58-1], re motion to sever cross-complaints [58-2] (cag) (Entered: 07/30/2002)
7/25/02	61	Declaration of Frank J. Janecek, Jr. re motion to strike [58-1], re motion to sever cross-complaints [58-2] (cag) (Entered: 07/30/2002)
7/25/02	62	Declaration of Barry Himmelstein re motion to strike [58-1], re motion to

sever cross-complaints [58-2] (cag) (Entered: 07/30/2002)

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7/29/02 64 JOINDER by MIECO Inc joining motion to dismiss for failure to state a claim [54-1] (cag) (Entered: 07/30/2002)

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8/9/02 78 Statement of non-opposition by cross-defendants to motion to dismiss master complaint [38-1] (bar) (Entered: 08/12/2002)

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8/9/02 80 Statement of non-opposition by cross-defendants to motion to dismiss master complaint [38-1] (bar) (Entered: 08/12/2002)

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8/9/02	83	Opposition by PP and L Montana LLC to motion to remand and motion to strike [58-1], motion to sever cross-complaints [58-2] (cag) (Entered: 08/12/2002)
8/9/02	84	Opposition by British Columbia to motion to remand and motion to strike [58-1], motion to sever cross-complaints [58-2] (cag) (Entered: 08/12/2002)
8/9/02	85	Declaration of Kenneth G. Peterson re motion response [84-1] (cag) (Entered: 08/12/2002)
8/9/02	86	Request for Judicial Notice by British Columbia (cag) (Entered: 08/12/2002)
8/9/02	87	Declaration of Christopher P. Barry re request for judicial notice [86-1] (cag) (Entered: 08/12/2002)
8/9/02	88	Opposition by Powerex Corp to motion to remand and motion to strike [58-1], motion to sever cross-complaints [58-2] (cag) (Entered: 08/12/2002)
8/9/02	89	Declaration of Kenneth G. Peterson re motion response [88-1] (cag) (Entered: 08/12/2002)
8/9/02	90	Request for Judicial Notice by Powerex Corp (cag) (Entered: 08/12/2002)

8/9/02	91	Declaration of Christopher P. Barry re request for judicial notice [90-1] (cag) (Entered: 08/12/2002)
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8/12/02	93	Declaration of Todd R. Kinnear re motion response [81-1] (cag) (Entered: 08/13/2002)
8/12/02	94	Declaration of Joel B. Kleinman re motion response [81-1] (cag) (Entered: 08/13/2002)
8/12/02	95	Request for Judicial Notice by Reliant dfts (cag) (Entered: 08/13/2002)
8/12/02	96	Notice of lodgment by Reliant dfts re opposition to motion to remand and motion to strike and/or sever crscmps (cag) (Entered: 08/13/2002)
		* * * * *
8/14/02	100	Response by USA, Department of Energy, Bonneville Power, Western Area Power to motion to strike [58-1], motion to sever cross-complaints [58-2] and motion to remand; NUNC PRO TUNC to 8/9/02 (cag) (Entered: 08/15/2002)
8/14/02	101	Joint Opposition by Reliant crsclms to motion to dismiss crossclaims for failure to state a claim [54-1] (cag) (Entered: 08/15/2002)
8/14/02	102	Opposition by Reliant crsclms to motion to dismiss cross cmp for failure to state a claim [22-1] (cag) (Entered: 08/15/2002)
8/14/02	103	Declaration of Todd R. Kinnear re motion response [101-1] (cag) (Entered: 08/15/2002)

8/14/02	104	Request for Judicial Notice by Reliant crsclms re opposition [101-1] (cag) (Entered: 08/15/2002)
8/14/02	105	Suppl Notice of lodgment by Reliant crsclms re opposition [101-1] (cag) (Entered: 08/15/2002)
8/15/02	106	JOINDER by Powerex Corp joining motion to dismiss for failure to state a claim [54-1] (cag) (Entered: 08/16/2002)
8/15/02	107	JOINDER by British Columbia joining motion to dismiss for failure to state a claim [54-1] (cag) (Entered: 08/16/2002)

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8/22/02	109	Notice of Motion and Motion by cross-defendant British Columbia to dismiss cross complaint [motion referred to Judge Robert H. Whaley] motion set for 9/19/02 at 2:00 (jrl) (Entered: 08/23/2002)
8/22/02	110	Memorandum of points and authorities by cross-defendant British Columbia in support of motion to dismiss cross complaint [109-1] (jrl) (Entered: 08/23/2002)
8/22/02	111	Declaration by Christopher P. Barry for cross-defendant British Columbia re motion to dismiss cross complaint [109-1] (jrl) (Entered: 08/23/2002)
8/22/02	112	Declaration by Christopher P. Barry for cross-defendant British Columbia re motion to dismiss cross complaint [109-1] (jrl) (Entered: 08/23/2002)
8/22/02	113	Declaration by Kenneth Spafford for cross-defendant Sunlaw Cogeneration re motion to dismiss cross complaint [109-1] (jrl) (Entered: 08/23/2002)

8/22/02	114	Declaration by Valerie Lambert for cross-defendant British Columbia re motion to dismiss cross complaint [109-1] (jrl) (Entered: 08/23/2002)
8/22/02	115	Request for Judicial Notice by cross-defendant British Columbia motion to dismiss cross complaint [109-1] (jrl) (Entered: 08/23/2002)

* * * * *

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8/30/02	118	Opposition by Cruz M Bustamante, Barbara Matthews and General Public of State of CA to motion to dismiss the fifth cause of action in plaintiffs' master complaint [31-1] (cag) (Entered: 09/03/2002)
8/30/02	119	Reply by Silicon Valley Power, Northern CA Power, Sacramento Municipal, Salt River Project to opposition to motion to dismiss cross cmp for failure to state a claim [22-1] (cag) (Entered: 09/03/2002)
8/30/02	120	Reply by Arizona Elec Power, Avista Energy Inc, Silicon Valley Power, Idaho Power Company, Northern CA Power, Puget Sound Energy, Sacramento Municipal, Salt River Project, Sierra Pacific, Trans Alta Energy, Tucson Elec Power to opposition to motion to dismiss for failure to state a claim [54-1] (cag) (Entered: 09/03/2002)
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		Northern CA Power, Puget Sound Energy, Sacramento Municipal, Salt River Project, Sierra Pacific, Trans Alta Energy, Tucson Elec Power to strike evidence submitted in support of jt opposition to motion to dismiss and opposition to motion to dismiss [motion referred to Judge Robert H. Whaley]; motion hrg set for 9/19/02 at 8:30 (cag) (Entered: 09/03/2002)
8/30/02	122	Reply by LA Dept of Water to joint opposition to motion to dismiss and opposition to motion to dismiss by public entity crsdfts (cag) (Entered: 09/03/2002)
8/30/02	123	Appendix of CA authorities re reply [122-1] by LA Dept of Water (cag) (Entered: 09/03/2002)
9/3/02	124	Supplemental response by USA re response to motion to remand [100-1] (cag) (Entered: 09/05/2002)
9/3/02	125	Reply by British Columbia to opposition to motion to dismiss cross complaint [109-1] (cag) (Entered: 09/05/2002)
9/3/02	126	Declaration of Douglas M. Butz re motion reply [125-1] (cag) (Entered: 09/05/2002)
9/3/02	127	Notice of lodgment by British Columbia re reply opposition to motion [125-1] (cag) (Entered: 09/05/2002)
9/4/02	128	Supplemental opposition by Reliant dfts re response to motion re foreign sovereign crsdfts [81-1] (cag) (Entered: 09/05/2002)

9/4/02	129	Declaration of Todd R. Kinnear re supplemental opposition [128-1] (cag) (Entered: 09/05/2002)
9/4/02	130	Declaration of Nora Cregan re supplemental opposition [128-1] (cag) (Entered: 09/05/2002)
9/4/02	131	Suppl Notice of lodgment re suppl opposition [128-1] (cag) (Entered: 09/05/2002)

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9/4/02	133	Memorandum by Powerex Corp in support of suppl brief re subject matter jurisdiction; NUNC PRO TUNC to 9/3/02 (cag) (Entered: 09/05/2002)
9/4/02	134	Declaration of Douglas M. Butz re memorandum [133-1]; NUNC PRO TUNC to 9/3/02 (cag) (Entered: 09/05/2002)
9/4/02	135	Notice of lodgment by Powerex Corp re suppl brief [133-1]; NUNC PRO TUNC to 9/3/02 (cag) (Entered: 09/05/2002)

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9/5/02	137	Reply by plaintiffs to opposition to motion to strike [58-1], motion to sever cross-complaints [58-2]; NUNC PRO TUNC to 9/4/02 (cag) (Entered: 09/05/2002)
9/5/02	138	Declaration of Barry R. Himmelstein re motion reply [137-1]; NUNC PRO TUNC to 9/4/02 (cag) (Entered: 09/05/2002)
9/10/02	139	Minutes of hrg on 9/4/02: Enter Order by Judge Robert H. Whaley; ct to prepare order. Court Reporter: Debra Clark (cag) (Entered: 09/11/2002)

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9/16/02	142	Joint Supplemental Response by Reliant crsdfts to USA's response to motion to remand and motion to strike and/or sever crsdfts; NUNC PRO TUNC to 9/6/02 (cag) (Entered: 09/17/2002)
		* * * * *
9/16/02	144	Notice of Errata and Response by Reliant crsclms to certain stmts in pla's reply memo re remand; NUNC PRO TUNC to 9/6/02 (cag) (Entered: 09/17/2002)
		* * * * *
9/16/02	146	Objs and Motion to strike portions of decls of Kenneth Spafford and Valerie Lambert re motion to dismiss; [motion referred to Judge Robert H. Whaley]; motion hrg set for 9/19/02 at 10:00; NUNC PRO TUNC to 9/6/02 (cag) Modified on 09/17/2002 (Entered: 09/17/2002)
		* * * * *
9/16/02	148	Opposition by Reliant dfts to motion to dismiss cross complaint [109-1]; NUNC PRO TUNC to 9/6/02 (cag) (Entered: 09/17/2002)
9/16/02	149	Declaration of Todd R. Kinnear re motion response [148-1]; NUNC PRO TUNC to 9/6/02 (cag) (Entered: 09/17/2002)
9/16/02	150	Declaration of John Pespisa re motion response [148-1]; NUNC PRO TUNC to 9/6/02 (cag) (Entered: 09/17/2002)
		* * * * *
9/16/02	152	Amd Exhibit B to decl of John Pespisa re opposition [150-1]; NUNC PRO

TUNC to 9/9/02 (cag) Modified on 09/17/2002 (Entered: 09/17/2002)

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9/16/02 154 Opposition by British Columbia to motion to strike portions of decls of Kenneth Spafford and Valerie Lambert re motion to dismiss [146-1]; NUNC PRO TUNC to 9/13/02 (cag) (Entered: 09/17/2002)

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9/16/02 156 Reply by British Columbia to opposition to motion to dismiss cross complaint [109-1]; NUNC PRO TUNC to 9/13/02 (cag) (Entered: 09/17/2002)

9/16/02 157 Declaration of Douglas M. Butz re motion reply [156-1]; NUNC PRO TUNC to 9/13/02 (cag) (Entered: 09/17/2002)

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9/17/02 162 Ex Parte Application by Reliant dfts for leave to file 2nd suppl brief in opposition to motion to remand and motion to dismiss (cag) Modified on 09/19/2002 (Entered: 09/19/2002)

9/17/02 163 Notice of filing of materials under seal by Reliant dfts (cag) Modified on 09/19/2002 (Entered: 09/19/2002)

9/18/02 160 Minutes: Enter Order by Mag Judge Burns recusing and ordering case be reassigned to another Mag Judge; Case referred to Magistrate Judge Anthony J. Battaglia (cag) (Entered: 09/19/2002)

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9/18/02	164	Opposition by coordinated plaintiffs to motion to dismiss master complaint [38-1] (cag) (Entered: 09/19/2002)
		* * * * *
9/18/02	166	Declaration of Frank J. Janecek re motion response [165-1], re motion response [164-1] (cag) (Entered: 09/19/2002)
9/18/02	167	Notice of lodgment by plaintiffs re opposition to motions [164-1], [165-1] (Volume 1 of 2) (cag) (Entered: 09/19/2002)
9/18/02	168	Notice of lodgment by plaintiffs re opposition to motions [164-1], [165-1] (Volume 2 of 2) (cag) (Entered: 09/19/2002)
9/18/02	169	Request for Judicial Notice by plaintiffs re opposition to motions [164-1], [165-1] (cag) (Entered: 09/19/2002)
		* * * * *
9/18/02	174	Sealed 2nd suppl brief in opposition to motion to remand and motion to dismiss (pursuant to Court Order) (cag) (Entered: 09/19/2002)
9/18/02	175	Sealed decl of Todd R. Kinnear (pursuant to Court Order) re [174-1] (cag) (Entered: 09/19/2002)
9/18/02	176	Sealed Notice of lodgment (pursuant to Court Order) re [174-1] (cag) (Entered: 09/19/2002)
9/18/02	177	Objections by British Columbia to [174-1] (cag) (Entered: 09/19/2002)
		* * * * *
9/19/02	179	Minutes: Enter Order by Magistrate Judge Anthony J. Battaglia recusing

from action and ordering another mag judge be assigned; Case referred to Magistrate Judge Louisa S. Porter (cag) (Entered: 09/20/2002)

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9/23/02 182 Minutes: Enter Order by Magistrate Judge Louisa S. Porter recusing and requesting another mag judge be assigned; Case referred to Magistrate Judge Ruben B. Brooks (cag) (Entered: 09/26/2002)

10/1/02 183 Minutes: Each and all of the magistrate judges for the United States District Court for the Southern District of CA recuse themselves from this case. Case referred to Unassigned Court Reporter: n/a (Nunc pro tunc to 9/6/02) (dkt clerk) (Entered: 10/01/2002)

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10/18/02 188 Order by Judge Robert H. Whaley granting ex parte application for leave to file 2nd suppl brief in opposition to motion to remand and motion to dismiss [162-1]; crsdfts BC Hydro and Powerex shall have 10 days from date of this order to file 2nd suppl brief in opposition (cag) (Entered: 10/21/2002)

10/29/02 189 Reply by Reliant Energy Svc, Reliant Ormond Beach, Reliant Energy, Reliant Ener Ellwood, Reliant Mandalay Inc, Reliant Coolwater to opposition to motion to dismiss master complaint [38-1] (cag) (Entered: 10/30/2002)

10/29/02	190	Declaration of Todd R. Kinnear re motion reply [189-1] (cag) (Entered: 10/30/2002)
10/29/02	191	Request for Judicial Notice by Reliant dfts re motion reply 189 (cag) (Entered: 10/30/2002)
10/29/02	192	Joint Notice of lodgment by Reliant dfts re motion reply 189 (cag) (Entered: 10/30/2002)
11/4/02	193	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)
11/4/02	194	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)
11/4/02	195	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)

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12/16/02	201	Ex Parte Application of Duke Energy and Reliant Energy dfts for stay of remand pending resolution of appeal, ruling on pending appl for service order (cag) (Entered: 12/17/2002)
12/16/02	203	Notice of appeal by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Energy, cross-claimant Reliant Ener Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater from Dist. Court decision entered on 12/17/02. Receipt No/Amt of Fee: Not Paid [202-2] (dkt clerk) (Entered: 12/18/2002)
12/17/02	202	Order by Judge Robert H. Whaley granting plas' motion to remand, motion to strike [58-1] and motion to sever cross-complaints [58-2]; remanding case

		to state court (per req of ct, order not sent to state ct until appl to stay remand heard) (cag) (Entered: 12/17/2002)
12/17/02	204	Ex Parte Application by Powerex Corp for stay of remand pending resolution of appeal to 9th circuit (cag) (Entered: 12/18/2002)
12/18/02		Notice of appeal sent to Circuit Court [203-1] (dkt clerk) (Entered: 12/18/2002)
		* * * * *
12/18/02	238	Notice of appeal by defendant Duke Energy Trading from Dist. Court decision entered on 12/17/02. Receipt No/Amt of Fee: $105.00 [202-2], t/w Representation statement (dkt clerk) Modified on 02/07/2003 (Entered: 02/07/2003)
		* * * * *
1/6/03	209	Memorandum by plaintiffs in opposition to applications for stay of remand [204-1], [201-1] (cag) (Entered: 01/07/2003)
1/6/03	210	Declaration of Barry Himmelstein re memorandum in opposition [209-1] (cag) (Entered: 01/07/2003)
1/7/03	211	Motion by USA for clarification of order granting motion to remand; [motion referred to Judge Robert H. Whaley] (cag) (Entered: 01/09/2003)
1/10/03	214	Notice of Motion and Motion by Powerex Corp for reconsideration; [motion referred to Judge Robert H. Whaley] (cag) (Entered: 01/14/2003)
1/10/03	215	Memorandum of points and authorities by Powerex Corp in support of motion

for reconsideration [214-1] (cag) (Entered: 01/14/2003)

1/10/03 216 LR 7.1(i) Certified Statement by Powerex Corp re motion for reconsideration [214-1] (cag) (Entered: 01/14/2003)

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1/13/03 213 Response by Arizona Elec Power, Avista Energy Inc, Idacorp Energy, Silicon Valley Power, Idaho Power Company, Northern CA Power, Puget Sound Energy, Sacramento Municipal, Salt River Project, Sierra Pacific, Trans Alta Energy, Tucson Elec Power to ex parte appl for stay of remand pending appeal; NUNC PRO TUNC to 1/7/03 (cag) (Entered: 01/13/2003)

1/13/03 217 Reply by Powerex Corp re appl for stay of remand [204-1] (cag) (Entered: 01/14/2003)

1/13/03 218 Reply by Reliant Entity and Duke Energy dfts re appl for stay of remand [201-1] (cag) (Entered: 01/14/2003)

1/13/03 219 Declaration of John T. Brooks re reply [218-1] (cag) (Entered: 01/14/2003)

1/13/03 220 Memorandum by LA Dept of Water in opposition to application for stay of remand [201-1] (cag) (Entered: 01/14/2003)

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1/13/03 224 Notice of appeal by cross-defendant Powerex Corp from Dist. Court decision entered on 12/17/02. Receipt No/Amt of Fee: $105.00, 090333 [202-2] (dkt clerk) (Entered: 01/14/2003)

1/14/03		Notice of appeal sent to Circuit Court [224-1] (dkt clerk) (Entered: 01/14/2003)
		* * * * *
1/15/03	226	Notification by Circuit Court of Appellate Docket Number [203-1] 02-57202 (dkt clerk) (Entered: 01/16/2003)
		* * * * *
1/27/03	228	Order by Judge Robert H. Whaley denying ex parte application to stay remand [201-1], denying ex parte application to stay remand [204-1], re motion for reconsideration [214-1]: opposition to motion due by 1/31/03, reply to opposition to motion due by 2/5/03; motion hearing set for 2/7/03 before Judge Robert Whaley w/o oral argument (cag) (Entered: 01/27/2003)
1/27/03	229	Notification by Circuit Court of Appellate Docket Number [224-1] 03-55131 (dkt clerk) (Entered: 01/27/2003)
		* * * * *
1/29/03	232	Notification by Circuit Court of Appellate Docket Number [203-1] 02-57202 (dkt clerk) (Entered: 01/29/2003)
		* * * * *
2/3/03	234	Opposition by plaintiffs to motion for reconsideration [214-1]; NUNC PRO TUNC to 1/31/03 (cag) (Entered: 02/03/2003)
2/3/03	235	Order by Judge Robert H. Whaley denying motion for clarification of order granting motion to remand [211-1] (cag) (Entered: 02/03/2003)
		* * * * *

2/5/03	237	Reply by Powerex Corp to opposition to motion for reconsideration [214-1] (cag) (Entered: 02/06/2003)
2/7/03		Notice of appeal sent to Circuit Court [238-1] (dkt clerk) (Entered: 02/07/2003)
2/14/03	241	Notice of appeal by cross-defendant USA, cross-defendant Department of Energy, cross-defendant Bonneville Power, cross-defendant Western Area Power from Dist. Court decision entered on 12/17/02. Receipt No/Amt of Fee: No Fee Required [202-2] (dkt clerk) (Entered: 02/18/2003)
2/14/03	242	Copy of Appellate Court Order ordering the appellee to respond to the emergency motion to stay the remand by 2/14/03 and reply due 2/19/03 (dkt clerk) (Entered: 02/18/2003)
2/18/03		Notice of appeal sent to Circuit Court [241-1] (dkt clerk) (Entered: 02/18/2003)
		* * * * *
2/21/03	244	Notification by Circuit Court of Appellate Docket Number [238-1] 03-55266 (dkt clerk) (Entered: 02/24/2003)
		* * * * *
2/24/03		Transcript of motion hrg on 1/23/03 before Judge Whaley filed (cag) (Entered: 02/25/2003)
		* * * * *
3/6/03	249	Notification by Circuit Court of Appellate Docket Number [241-1] 03-55349 (dkt clerk) (Entered: 03/07/2003)
		* * * * *

5/27/03	252	Copy of Appellate Court Order staying the proceedings for 120 days as to NRG; the current briefing schedule remains in place as to the remainder of the parties (dkt clerk) (Entered: 05/28/2003)
		* * * * *
1/16/04	256	Stipulation to dismiss cross cmp as to Salt River Project and Order thereon by Judge Robert H. Whaley; terminating party Salt River Project (cag) (Entered: 01/16/2004)
1/21/04	257	Order by Judge Robert H. Whaley denying as moot motion for reconsideration [214-1] w/ leave to renew (cag) (Entered: 01/21/2004)
		* * * * *
3/28/05		Received judgement from USCA. Forwarded copy to Court Clerk for calendar. (affirmed/vacated/remanded) (dkt clerk) (Entered: 04/06/2005)
4/7/05	267	Certified copy of judgment from USCA affirming the decision of the District Court re: appeal [241-1], affirming the decision of the District Court re: appeal [224-1], affirming the decision of the District Court re: appeal [238-1], affirming the decision of the District Court re: appeal [203-1] (dkt clerk) (Entered: 04/07/2005)
5/11/05	268	Order by Judge Robert H. Whaley terminating dfts Western Power, Bonneville Power pursuant to 9th Circuit order (cag) (Entered: 05/12/2005)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

No. CV 02-1000-RHW

DUKE ENERGY TRADING AND MARKETING, LLC, ET AL.,
Plaintiffs,

v.

ARIZONA PUBLIC SERVICE COMPANY, ET AL.,
Defendants.

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
		* * * * *
5/22/02	1	Notice of Removal from SD Superior Court t/w copy of complaint; Case Number: 4204 & 4205 (to Magistrate Judge John A. Houston); Receipt No/Amt of Fee: 82812/$150; jury demand (dkt clerk) (Entered: 05/22/2002)
		* * * * *
5/30/02	5	Minutes: Enter Order by Judge M. J. Lorenz recusing himself, case reassigned to Judge Jeffrey T. Miller Court Reporter: n/a (dkt clerk) (Entered: 06/03/2002)
6/12/02	6	Minutes: Enter Order that all Judges in the USDC, Southern Dist of CA hereby recuse themselves from the above entitled case; Case reassigned to Judge

Robert H. Whaley (dkt clerk) (Entered: 06/13/2002)

6/24/02	7	Notice of Motion and Motion by crs-dfts Avista Energy Inc, IDACORP Energy LP, Puget Sound Energy, Tucson Elec Power Co to dismiss cross-complaint for failure to state a claim; [motion referred to Judge Robert H. Whaley]; motion hrg set for 9/19/02 at 8:30 (cag) (Entered: 06/26/2002)
6/24/02	8	Memorandum of points and authorities by crs-dfts Avista Energy Inc, IDACORP Energy LP, Puget Sound Energy, Tucson Elec Power Co in support of motion to dismiss cross-complaint for failure to state a claim [7-1] (cag) (Entered: 06/26/2002)
6/24/02	9	Request for Judicial Notice by crs-dfts Avista Energy Inc, IDACORP Energy LP, Puget Sound Energy, Tucson Elec Power Co motion to dismiss cross-complaint for failure to state a claim [7-1] (cag) (Entered: 06/26/2002)
6/26/02	10	Amended Notice of Motion and Motion submitted by Avista Energy Inc, IDACORP Energy LP, Puget Sound Energy, Tucson Elec Power Co to dismiss cross cmp for failure to state a claim; [motion referred to Judge Robert H. Whaley]; motion hrg set for 8/7/02 at 10:00; NUNC PRO TUNC to 6/25/02 (cag) (Entered: 06/26/2002)

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7/10/02	16	Notice of Motion and Motion by defendant Riliant Energy service Inc, Reliant Ormond LLC, Reliant Energy Etiwanda

		LLC, Reliant Energy Ellwood LLC, Reliant Energy Mandalay LLC, and Reliant Energy Coolwater LLC; to dismiss master complaint [motion(s) referred to Judge Robert H. Whaley]; motion hrg set for 08/07/02 9:00 (joeh) (Entered: 07/16/2002)
7/10/02	17	Memorandum of points and authorities by Reliant Energy Service Inc, Reliant Ormond LLC, Reliant Energy Etiwanda LLC, Reliant Energy Ellwood LLC, Reliant Energy Mandalay LLC, and Reliant Energy Coolwater LLC, in support of motion to dismiss master complaint [16-1] (joeh) Modified on 07/16/2002 (Entered: 07/16/2002)
7/10/02	18	Declaration of Todd R Kinnear in support of request for judicial notice by defendant Reliant Energy Service Inc, Reliant Ormond LLC, Reliant Energy Etiwanda LLC, Reliant Energy Ellwood LLC, Reliant Energy Mandalay LLC, and Reliant Energy Coolwater LLC, re motion to dismiss master complaint [16-1] (joeh) Modified on 07/16/2002 (Entered: 07/16/2002)
7/10/02	19	Request for Judicial Notice in support by defendant Reliant Energy Service Inc, Reliant Ormond LLC, Reliant Energy Etiwanda LLC, Reliant Energy Ellwood LLC, Reliant Energy Mandalay LLC, and Reliant Energy Coolwater LLC, motion to dismiss master complaint [16-1], motion to strike and to stay (joeh) Modified on 07/16/2002 (Entered: 07/16/2002)

7/10/02	20	Joint notice of lodgment of federal energy regulatory commission orders and other matters subject to dft's request for Judicial notice in support by defendant Reliant Energy Service Inc, Reliant Ormond LLC, Reliant Energy Etiwanda LLC, Reliant Energy Ellwood LLC, Reliant Energy Mandalay LLC, and Reliant Energy Coolwater LLC; motion to dismiss master complaint [16-1]; motion to strike and motion to stay (joeh) Modified on 07/16/2002 (Entered: 07/16/2002)
		* * * * *
7/15/02	24	Minutes: Enter Order by Magistrate Judge John A. Houston recusing from case and directing another magistrate judge be assigned; Case referred to Magistrate Judge Anthony J. Battaglia (cag) (Entered: 07/16/2002)
7/16/02	21	Joint notice of lodgment of individual complaints in support by defendant Reliant Energy Service Inc, Reliant Ormond LLC, Reliant Energy Etiwanda LLC, Reliant Energy Ellwood LLC, Reliant Energy Mandalay LLC, and Reliant Energy Coolwater LLC; motion to dismiss master complaint [16-1], motion to strike and motion to stay (joeh) (Entered: 07/16/2002)
		* * * * *
7/22/02	27	Minutes: Enter Order by Magistrate Judge Anthony J. Battaglia recusing and directing clk to assign another mag judge; Case referred to Magistrate Judge Nita L. Stormes (cag) (Entered: 07/24/2002)

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7/24/02	29	2nd Amended Motion submitted by Avista Energy Inc, IDACORP Energy LP, Puget Sound Energy, Tucson Elec Power Co to dismiss for failure to state a claim; [motion referred to Judge Robert H. Whaley]; motion hrg set for 9/19/02 at 8:30; NUNC PRO TUNC to 7/23/02 (cag) (Entered: 07/24/2002)

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7/29/02	31	JOINDER by MIECO Inc joining motion to dismiss for failure to state a claim [29-1] (cag) (Entered: 07/30/2002)

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7/31/02	33	JOINDER by Public Service Co NM joining motion to dismiss for failure to state a claim [29-1]; NUNC PRO TUNC to 7/30/02 (cag) (Entered: 08/01/2002)

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8/9/02	38	Opposition by Reliant Energy Svc, Reliant Ormond Beach, Reliant Energy, Reliant Energy Ell, Reliant Energy Mand, Reliant Energy Cool to motion to remand (cag) (Entered: 08/12/2002)
8/9/02	39	Opposition by British Columbia to motion to remand and motion to strike and/or sever crscmps (cag) (Entered: 08/12/2002)
8/9/02	40	Declaration of Kenneth G. Peterson re motion response [39-1] (cag) (Entered: 08/12/2002)
8/9/02	41	Request for Judicial Notice by British Columbia (cag) (Entered: 08/12/2002)

8/9/02	42	Declaration of Christopher P. Barry re request for judicial notice [41-1] (cag) (Entered: 08/12/2002)
8/9/02	43	Opposition by Powerex Corp to motion to remand and motion to strike and/ or sever crscmps (cag) (Entered: 08/12/2002)
8/9/02	44	Declaration of Kenneth G. Peterson re motion response [43-1] (cag) (Entered: 08/12/2002)
8/9/02	45	Request for Judicial Notice by Powerex Corp (cag) (Entered: 08/12/2002)
8/9/02	46	Declaration of Christopher P. Barry re request for judicial notice [45-1] (cag) (Entered: 08/12/2002)

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8/12/02	48	Declaration of Todd R. Kinnear re motion response [38-1] (cag) (Entered: 08/13/2002)
8/12/02	49	Declaration of Joel B. Kleinman re motion response [38-1] (cag) (Entered: 08/13/2002)
8/12/02	50	Notice of lodgment by Reliant Energy Svc, Reliant Ormond Beach, Reliant Energy, Reliant Energy Ell, Reliant Energy Mand, Reliant Energy Cool re opposition to motion to remand and motion to strike and/or sever crscmps (cag) (Entered: 08/13/2002)
8/12/02	51	Request for Judicial Notice by Reliant Energy Svc, Reliant Ormond Beach, Reliant Energy, Reliant Energy Ell, Reliant Energy Mand, Reliant Energy Cool re opposition to motion to remand and

		motion to strike and/or sever crscmps (cag) (Entered: 08/13/2002)
8/14/02	52	Opposition by crsdfts USA, Department of Energy, Bonneville Power, Western Area Power to motion to remand and motion to strike and/or sever crscmps (cag) (Entered: 08/15/2002)
8/14/02	53	Joint Opposition by Reliant dfts to motion to dismiss for failure to state a claim [29-1] (cag) (Entered: 08/15/2002)
8/14/02	54	Opposition by Reliant dfts to motion to dismiss (cag) (Entered: 08/15/2002)
8/14/02	55	Declaration of Todd R. Kinnear re motion response [53-1] (cag) (Entered: 08/15/2002)
8/14/02	56	Request for Judicial Notice by Reliant dfts re opposition [53-1] (cag) (Entered: 08/15/2002)
8/14/02	57	Notice of lodgment by Reliant dfts re opposition [53-1] (cag) (Entered: 08/15/2002)
8/15/02	58	JOINDER by Powerex Corp joining motion to dismiss for failure to state a claim [29-1] (cag) (Entered: 08/16/2002)
8/15/02	59	JOINDER by British Columbia joining motion to dismiss for failure to state a claim [29-1] (cag) (Entered: 08/16/2002)
8/22/02	60	Notice of Motion and Motion by cross-defendant British Columbia to dismiss cross complaint [motion referred to Judge Robert H. Whaley] motion hrg set for 9/19/02 at 2:00 (jrl) (Entered: 08/23/2002)

8/22/02	61	Memorandum of points and authorities by cross-defendant British Columbia in support of motion to dismiss cross complaint [60-1] (jrl) (Entered: 08/23/2002)
8/22/02	62	Declaration by Christopher P. Barry for cross-defendant British Columbia re motion to dismiss cross complaint [60-1] (jrl) (Entered: 08/23/2002)
8/22/02	63	Declaration by Christopher P. Barry for cross-defendant British Columbia re motion to dismiss cross complaint [60-1] (jrl) (Entered: 08/23/2002)
8/22/02	64	Declaration by Kenneth Spafford for cross-defendant British Columbia re motion to dismiss cross complaint [60-1] (jrl) (Entered: 08/23/2002)
8/22/02	65	Declaration by Valerie Lambert for cross-defendant British Columbia re motion to dismiss cross complaint [60-1] (jrl) (Entered: 08/23/2002)
8/22/02	66	Request for Judicial Notice by cross-defendant British Columbia motion to dismiss cross complaint [60-1] (jrl) (Entered: 08/23/2002)
8/29/02	67	Notice of errata by British Columbia; NUNC PRO TUNC to 8/27/02 (cag) (Entered: 08/29/2002)
9/3/02	68	Reply by British Columbia to opposition to motion to dismiss cross complaint [60-1] (cag) (Entered: 09/05/2002)
9/3/02	69	Declaration of Douglas M. Butz re motion reply [68-1] (cag) (Entered: 09/05/2002)

9/3/02	70	Notice of lodgment by British Columbia re reply to opposition to motion [68-1] (cag) (Entered: 09/05/2002)
9/4/02	71	Memorandum by Powerex Corp in support of suppl brief re subject matter jurisdiction; NUNC PRO TUNC to 9/3/02 (cag) (Entered: 09/05/2002)
9/4/02	72	Declaration of Douglas M. Butz re memorandum [71-1]; NUNC PRO TUNC to 9/3/02 (cag) (Entered: 09/05/2002)
9/4/02	73	Notice of lodgment by Powerex Corp re suppl brief [71-1] (cag) (Entered: 09/05/2002)
9/4/02	74	Suppl Opposition by Duke dfts to motion to remand re foreign sovereign crsdfts (cag) (Entered: 09/06/2002)
9/4/02	75	Declaration of Nora Cregan re motion response [74-1] (cag) (Entered: 09/06/2002)
9/4/02	76	Declaration of Rodd R. Kinnear re motion response [74-1] (cag) (Entered: 09/06/2002)
9/4/02	77	Notice of lodgment by Duke dfts re opposition [74-1] (cag) (Entered: 09/06/2002)
9/10/02	78	Minutes of hrg on 9/4/02: Enter Order by Judge Robert H. Whaley; ct to prepare order. Court Reporter: Debra Clark (cag) (Entered: 09/11/2002)

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9/16/02	81	Reply by British Columbia to opposition to motion to dismiss cross complaint

[60-1]; NUNC PRO TUNC to 9/4/02 (cag) (Entered: 09/17/2002)

9/16/02 82 Declaration of Douglas M. Butz re motion reply [81-1]; NUNC PRO TUNC to 9/4/02 (cag) (Entered: 09/17/2002)

9/16/02 83 Objs and Motion to strike portions of decls of Kenneth Spafford and Valerie Lambert re motion to dismiss; [motion referred to Judge Robert H. Whaley]; motion hrg set for 9/19/02 at 10:00; NUNC PRO TUNC to 9/6/02 (cag) (Entered: 09/17/2002)

9/16/02 84 Amd Exhibit B filed to decl of John Pespisa (in 02cv990) (cag) (Entered: 09/17/2002)

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9/16/02 86 Opposition by British Columbia to objs and motion to strike portions of decls of Kenneth Spafford and Valerie Lambert re motion to dismiss [83-1]; NUNC PRO TUNC to 9/13/02 (cag) (Entered: 09/17/2002)

9/16/02 87 Opposition by Reliant dfts to motion to dismiss cross complaint [60-1] (cag) (Entered: 09/17/2002)

9/16/02 88 Declaration of Todd R. Kinnear re motion response [87-1] (cag) (Entered: 09/17/2002)

9/16/02 89 Declaration of John Pespisa re motion response [87-1] (cag) (Entered: 09/17/2002)

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9/17/02 91 Ex Parte Application by Reliant dfts for leave to file 2nd suppl brief in opposition

		to motion to remand and motion to dismiss (cag) (Entered: 09/19/2002)
9/17/02	92	Notice of filing by Reliant dfts of materials under seal (cag) (Entered: 09/19/2002)
		* * * * *
9/18/02	97	Sealed 2nd suppl brief in opposition to motion to remand and motion to dismiss (pursuant to Court Order) (cag) (Entered: 09/19/2002)
9/18/02	98	Sealed decl of Todd R. Kinnear (pursuant to Court Order) re [97-1] (cag) (Entered: 09/19/2002)
9/18/02	99	Sealed notice of lodgment (pursuant to Court Order) re [97-1] (cag) (Entered: 09/19/2002)
9/18/02	100	Objections by British Columbia to [97-1] (cag) (Entered: 09/19/2002)
		* * * * *
9/30/02	102	Minutes: Enter Order by Magistrate Judge Nita L. Stormes recusing and requesting another mag judge be assigned; Case referred to Magistrate Judge Louisa S. Porter (cag) (Entered: 10/02/2002)
		* * * * *
10/18/02	105	Order by Judge Robert H. Whaley granting ex parte application for leave to file 2nd suppl brief in opposition to motion to remand and motion to dismiss [91-1]; crsdfts BC Hydro and Powerex shall have 10 days to file 2nd suppl brief (cag) (Entered: 10/21/2002)

10/28/02	106	Minutes: Enter Order recusing all Mag Judges of SDCA; Case referred to case Unassigned (cag) (Entered: 10/28/2002)
10/29/02	107	Reply by Reliant Energy Svc, Reliant Ormond Beach, Reliant Energy, Reliant Energy Ell, Reliant Energy Mand, Reliant Energy Cool to opposition to motion to dismiss master complaint [16-1] (cag) (Entered: 10/30/2002)
10/29/02	108	Declaration by Reliant dfts re motion reply [107-1] (cag) (Entered: 10/30/2002)
10/29/02	109	Request for Judicial Notice by Reliant dfts re motion reply 107 (cag) (Entered: 10/30/2002)
10/29/02	110	Notice of lodgment by Reliant dfts re motion reply 107 (cag) (Entered: 10/30/2002)
11/4/02	111	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)
11/4/02	112	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)
11/4/02	113	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)
11/4/02	114	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)
11/4/02	115	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)

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12/16/02	121	Ex Parte Application of Duke Energy and Reliant Energy dfts for stay of remand pending resolution of appeal, ruling on pending appl for service order (cag) (Entered: 12/17/2002)

12/16/02	123	Notice of appeal by defendant Reliant Energy Svc, defendant Reliant Ormond Beach, defendant Reliant Energy, defendant Reliant Energy Ell, defendant Reliant Energy Mand, defendant Reliant Energy Cool from Dist. Court decision entered on 12/17/02. Receipt No/ Amt of Fee: Not Paid [122-2] (dkt clerk) (Entered: 12/18/2002)
12/17/02	122	Order by Judge Robert H. Whaley granting plas' motion to remand, motion to strike and motion to sever cross-complaints; remanding case to state court (per req of ct, order not sent to state ct until appl to stay remand heard) (cag) (Entered: 12/17/2002)
12/17/02	124	Ex Parte Application by Powerex Corp for stay of remand pending resolution of appeal to 9th circuit (cag) (Entered: 12/18/2002)
12/18/02		Notice of appeal sent to Circuit Court [123-1] (dkt clerk) (Entered: 12/18/2002)

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12/18/02	149	Notice of appeal by cross-claimant Duke Energy Trading, cross-claimant Duke Energy Morro, cross-claimant Duke Energy Moss, cross-claimant Duke Energy South, cross-claimant Duke Energy Oakland from Dist. Court decision entered on 12/17/02. Receipt No/Amt of Fee: $105.00 [122-2], t/w representation statement (dkt clerk) Modified on 02/07/2003 (Entered: 02/07/2003)

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1/2/03	127	Notification by Circuit Court of Appellate Docket Number [123-1] 02-57210 as to Reliant appeal (dkt clerk) (Entered: 01/03/2003)

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1/7/03	131	Motion by USA for clarification of order granting motion to remand; [motion referred to Judge Robert H. Whaley] (cag) (Entered: 01/09/2003)
1/10/03	132	Notice of Motion and Motion by Powerex Corp for reconsideration; [motion referred to Judge Robert H. Whaley] (cag) (Entered: 01/14/2003)
1/10/03	133	Memorandum of points and authorities by Powerex Corp in support of motion for reconsideration [132-1] (cag) (Entered: 01/14/2003)
1/10/03	134	LR 7.1(i) Certified Statement by Powerex Corp re motion for reconsideration [132-1] (cag) (Entered: 01/14/2003)
1/13/03	135	Reply by Powerex Corp re appl for stay of remand [124-1] (cag) (Entered: 01/14/2003)
1/13/03	136	Reply by Duke Energy and Reliant Entity dfts re appl for stay of remand [121-1] (cag) (Entered: 01/14/2003)
1/13/03	137	Declaration of John T. Brooks re reply [136-1] (cag) (Entered: 01/14/2003)

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1/13/03	139	Notice of appeal by cross-defendant Powerex Corp from Dist. Court decision entered on 12/17/02. Receipt No/Amt of Fee: $105.00, 090332 [122-2] (dkt clerk) (Entered: 01/14/2003)

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1/14/03		Notice of appeal sent to Circuit Court [139-1] (dkt clerk) (Entered: 01/14/2003)

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1/24/03	142	Notification by Circuit Court of Appellate Docket Number [139-1] 03-55118 (dkt clerk) (Entered: 01/24/2003)

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1/27/03	144	Order by Judge Robert H. Whaley denying ex parte application for stay of remand [121-1], denying ex parte application for stay of remand [124-1], re motion for reconsideration [132-1]: opposition to motion due by 1/31/03, reply to opposition to motion due by 2/5/03, motion hearing set for 2/7/03 before Judge Robert Whaley w/o oral argument (cag) (Entered: 01/27/2003)

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2/3/03	146	Order by Judge Robert H. Whaley denying motion for clarification of order granting motion to remand [131-1] (cag) (Entered: 02/03/2003)

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2/5/03	148	Reply by Powerex Corp to opposition to motion for reconsideration [132-1] (cag) (Entered: 02/06/2003)
2/7/03		Notice of appeal sent to Circuit Court [149-1] (dkt clerk) (Entered: 02/07/2003)
2/14/03	152	Notice of appeal by cross-defendant USA, cross-defendant Department of Energy, cross-defendant Bonneville Power, cross-defendant Western Area Power from Dist. Court decision entered

		on 2/12/02. Receipt No/Amt of Fee: No Fee Required [122-2] (dkt clerk) (Entered: 02/18/2003)
2/18/03		Notice of appeal sent to Circuit Court [152-1] (dkt clerk) (Entered: 02/18/2003)
		* * * * *
2/24/03		Transcript of motion hrg on 1/23/03 before Judge Whaley filed (original in 02cv990) (cag) (Entered: 02/25/2003)
3/3/03	154	Notification by Circuit Court of Appellate Docket Number [152-1] 03-55319 (dkt clerk) (Entered: 03/04/2003)
3/3/03	155	Notification by Circuit Court of Appellate Docket Number [149-1] 03-55241 (dkt clerk) (Entered: 03/04/2003)
		* * * * *
5/27/03	157	Copy of Appellate Court Order staying the proceedings for 120 days as to NRG; the current briefing schedule remains in place as to the remaining parties (dkt clerk) (Entered: 05/28/2003)
9/2/03	158	Copy of Appellate Court Order referring the 6/25/03 motion to intervene or for leave to file Amici Curiae brief is referred to panel assigned to hear the merits of these consolidated appeals (dkt clerk) (Entered: 09/03/2003)
9/2/03	159	Copy of Appellate Court Order referring the 6/25/03 motion to intervene or for leave to file an Amici Curiae brief to the panel assigned to hear the merits of these consolidated appeals (dkt clerk) (Entered: 09/03/2003)

1/21/04	160	Order by Judge Robert H. Whaley denying as moot motion for reconsideration [132-1] w/ leave to renew (cag) (Entered: 01/21/2004)

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3/28/05		Received judgement from USCA. Forwarded copy to Court Clerk for calendar. (affirmed/vacated/remanded) (dkt clerk) (Entered: 04/06/2005)
4/7/05	163	Certified copy of judgment from USCA affirming the decision of the District Court re: appeal [152-1], affirming the decision of the District Court re: appeal [139-1], affirming the decision of the District Court re: appeal [149-1], affirming the decision of the District Court re: appeal [123-1] (dkt clerk) (Entered: 04/07/2005)
5/11/05	164	Order by Judge Robert H. Whaley terminating dfts Western Area Power, Bonneville Power pursuant to 9th Circuit order (cag) (Entered: 05/12/2005)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

No. CV 02-1001-RHW

RELIANT ENERGY SERVICES, INC., ET AL.,
Plaintiffs,

v.

ARIZONA ELECTRIC POWER COOPERATIVE, INC., ET AL.,
Defendants.

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
		* * * * *
5/22/02	1	Notice of Removal from SD Superior Court Case Number: 4204-0005 and 4204-00006 (to Magistrate Judge Louisa S. Porter); Receipt No/Amt of Fee: 82814/$150; jury demand (dkt clerk) (Entered: 05/23/2002)
		* * * * *
5/31/02	5	Order by Judge Rudi M. Brewster, the court recuses itself from this action; the Case is now reassigned to Judge Thomas J. Whelan (dkt clerk) (Entered: 05/31/2002)
5/31/02	6	Notice of Motion and Motion by cross-defendant Trans Canada Power to quash service of summons, to dismiss for lack of jurisdiction, [motion(s) referred to Judge Jeffrey T. Miller] motion hrg

set for 7/1/02 at 10:30 (dkt clerk) Modified on 06/12/2002 (Entered: 06/03/2002)

5/31/02 7 Declaration of Ralph W Tarr by cross-defendant Trans Canada Power re motion to quash service of summons [6-1], re motion to dismiss for lack of jurisdiction [6-2] (dkt clerk) (Entered: 06/03/2002)

5/31/02 8 Memorandum of points and authorities by cross-defendant Trans Canada Power in support of motion to quash service of summons [6-1], in support of motion to dismiss for lack of jurisdiction [6-2] (dkt clerk) (Entered: 06/03/2002)

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6/6/02 13 Minutes: Enter Order by Magistrate Judge Louisa S. Porter Judge Porter hereby recused herself from the entitled action; Case referred to Magistrate Judge Nita L. Stormes (bar) (Entered: 06/07/2002)

* * * * *

6/7/02 15 Minutes: Enter Order by the clerk; pursuant to 28USC292(B) Chief Judge May M. Schroeder of the Ninth Circuit designates Judge Robert Whaley to perform duties temporarily for the Southern District of CA in this case; Case reassigned to Judge Robert H. Whaley Court Reporter: N/A (dkt clerk) (Entered: 06/10/2002)

6/10/02 16 Minutes: Enter Order by Magistrate Judge Nita L. Stormes. Case referred to Magistrate Judge Leo S. Papas Court

Reporter: N/A (dkt clerk) (Entered: 06/12/2002)

* * * * *

7/10/02	21	Notice of Motion and Motion by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Etiwanda Inc, cross-claimant Reliant Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater to dismiss master complaint [motion referred to Judge Robert H. Whaley]; motion hrg set for 08/07/02 at 9:00 (kaj) (Entered: 07/16/2002)
7/10/02	22	Declaration of Todd R. Kinnear in support of request for judicial notice re motion to dismiss master complaint [21-1] (kaj) Modified on 07/16/2002 (Entered: 07/16/2002)
7/10/02	23	Memorandum of points and authorities by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Etiwanda Inc, cross-claimant Reliant Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater in support of motion to dismiss master complaint [21-1] (kaj) (Entered: 07/16/2002)
7/10/02	24	Request for Judicial Notice by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Etiwanda Inc, cross-claimant Reliant Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater, motion to dismiss master complaint [21-1], motion

		to strike, motion to stay (kaj) Modified on 07/16/2002 (Entered: 07/16/2002)
7/10/02	25	Joint Notice of lodgment of individual complaints by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Etiwanda Inc, cross-claimant Reliant Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater; motion to dismiss master complaint [21-1], motion to strike, motion to stay (kaj) Modified on 07/16/2002 (Entered: 07/16/2002)
7/10/02	26	Joint Notice of lodgment of Federal Energy Regulatory Commission Orders and other matter subject for judicial notice by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Etiwanda Inc, cross-claimant Reliant Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater; motion to dismiss master complaint [21-1], motion to strike, and motion to stay (kaj) (Entered: 07/16/2002)
		* * * * *
7/29/02	33	JOINDER by MIECO Inc joining motion to dismiss cross-complaint (motion not on file in this case) (cag) (Entered: 07/30/2002)
		* * * * *
8/9/02	37	Opposition by Reliant Energy Svc, Reliant Ormond Beach, Reliant Etiwanda Inc, Reliant Ellwood, Reliant Mandalay Inc, Reliant Coolwater to motion to remand (cag) (Entered: 08/12/2002)

8/9/02	38	Opposition by British Columbia to motion to remand and motion to strike and/or sever crscmps (cag) (Entered: 08/12/2002)
8/9/02	39	Declaration of Kenneth G. Peterson re motion response [38-1] (cag) (Entered: 08/12/2002)
8/9/02	40	Request for Judicial Notice by British Columbia (cag) (Entered: 08/12/2002)
8/9/02	41	Declaration of Christopher P. Barry re request for judicial notice [40-1] (cag) (Entered: 08/12/2002)
8/9/02	42	Opposition by Powerex Corp to motion to remand and motion to strike and/or sever crscmps (cag) (Entered: 08/12/2002)
8/9/02	43	Declaration of Kenneth G. Peterson re motion response [42-1] (cag) (Entered: 08/12/2002)
8/9/02	44	Request for Judicial Notice by Powerex Corp (cag) (Entered: 08/12/2002)
8/9/02	45	Declaration of Christopher P. Barry re request for judicial notice [44-1] (cag) (Entered: 08/12/2002)

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8/12/02	47	Declaration of Todd R. Kinnear re motion response [37-1] (cag) (Entered: 08/13/2002)
8/12/02	48	Declaration of Joel B. Kleinman re motion response [37-1] (cag) (Entered: 08/13/2002)
8/12/02	49	Notice of lodgment by Reliant dfts re opposition to motion to remand and

		motion to strike and/or sever crscmps (cag) (Entered: 08/13/2002)
8/12/02	50	Request for Judicial Notice by Reliant dfts (cag) (Entered: 08/13/2002)
8/14/02	51	Opposition by USA, Department of Energy, Bonneville Power, Western Area Power to motion to remand and motion to strike and/or sever crscmps (cag) (Entered: 08/15/2002)
8/14/02	52	Joint Opposition by Reliant dfts to motion to dismiss crscmp (cag) (Entered: 08/15/2002)
8/14/02	53	Opposition by Reliant crscmps to motion to dismiss (cag) (Entered: 08/15/2002)
8/14/02	54	Declaration of Todd R. Kinnear re motion response [52-1] (cag) (Entered: 08/15/2002)
8/14/02	55	Request for Judicial Notice by Reliant crscmps re opposition [52-1] (cag) (Entered: 08/15/2002)
8/14/02	56	Notice of lodgment by Reliant crsclms re opposition [52-1] (cag) (Entered: 08/15/2002)
8/15/02	57	JOINDER by British Columbia joining motion to dismiss (cag) (Entered: 08/16/2002)
8/15/02	58	JOINDER by Powerex Corp joining motion to dismiss (cag) (Entered: 08/16/2002)
8/22/02	59	Notice of Motion and Motion by cross-defendant British Columbia to dismiss cross cmp [motion referred to Judge Robert H. Whaley] motion set for

		9/19/02 at 10:00 (jrl) (Entered: 08/23/2002)
8/22/02	60	Memorandum of points and authorities by cross-defendant British Columbia in support of motion to dismiss cross cmp [59-1] (jrl) (Entered: 08/23/2002)
8/22/02	61	Declaration by Christopher P. Barry for cross-defendant British Columbia re motion to dismiss cross cmp [59-1] (jrl) (Entered: 08/23/2002)
8/22/02	62	Declaration by Christopher P. Barry for cross-defendant British Columbia re motion to dismiss cross cmp [59-1] (jrl) (Entered: 08/23/2002)
8/22/02	63	Declaration by Valerie Lambert for cross-defendant British Columbia re motion to dismiss cross cmp [59-1] (jrl) (Entered: 08/23/2002)
8/22/02	64	Declaration by Kenneth Spafford for cross-defendant British Columbia re motion to dismiss cross cmp [59-1] (jrl) (Entered: 08/23/2002)
8/22/02	65	Request for Judicial Notice by cross-defendant British Columbia motion to dismiss cross cmp [59-1] (jrl) (Entered: 08/23/2002)
8/29/02	66	Notice of erratta by British Columbia; NUNC PRO TUNC to 8/27/02 (cag) (Entered: 08/29/2002)
9/3/02	67	Reply by British Columbia to opposition to motion to dismiss cross cmp [59-1] (cag) (Entered: 09/05/2002)
9/3/02	68	Declaration of Douglas M. Butz re motion reply [67-1] (cag) (Entered: 09/05/2002)

9/3/02	69	Notice of lodgment by British Columbia re reply to opposition to motion [67-1] (cag) (Entered: 09/05/2002)
9/4/02	70	Memorandum by Powerex Corp in support of suppl brief re subject matter jurisdiction; NUNC PRO TUNC to 9/3/02 (cag) (Entered: 09/05/2002)
9/4/02	71	Declaration of Douglas M. Butz re memorandum [70-1]; NUNC PRO TUNC to 9/3/02 (cag) (Entered: 09/05/2002)
9/4/02	72	Notice of lodgment by Powerex Corp re suppl brief [70-1]; NUNC PRO TUNC to 9/3/02 (cag) (Entered: 09/05/2002)
9/4/02	73	Suppl Opposition by Reliant dfts to motion to remand re foreign sovereign crsdfts (cag) (Entered: 09/06/2002)
9/4/02	74	Declaration of Nora Cregan re motion response [73-1] (cag) (Entered: 09/06/2002)
9/4/02	75	Declaration of Todd R. Kinnear re motion response [73-1] (cag) (Entered: 09/06/2002)
9/4/02	76	Notice of lodgment by Reliant dfts re opposition [73-1] (cag) (Entered: 09/06/2002)
9/10/02	77	Minutes of hrg on 9/4/02: Enter Order by Judge Robert H. Whaley; ct to prepare order. Court Reporter: Debra Clark (cag) (Entered: 09/11/2002)

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9/16/02	79	Objs and Motion by Reliant dfts to strike portions of decls of Kenneth Spafford and Valerie Lambert re motion to

dismiss; [motion referred to Judge Robert H. Whaley]; motion hrg set for 9/19/02 at 10:00; NUNC PRO TUNC to 9/6/02 (cag) (Entered: 09/17/2002)

9/16/02 80 Amd Exhibit B filed as to decl of John Pespisa (filed in 02cv990); NUNC PRO TUNC to 9/9/02 (cag) (Entered: 09/17/2002)

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9/16/02 82 Reply by British Columbia to opposition to motion to dismiss cross cmp [59-1]; NUNC PRO TUNC to 9/13/02 (cag) (Entered: 09/17/2002)

9/16/02 83 Declaration of Douglas M. Butz re motion reply [82-1]; NUNC PRO TUNC to 9/13/02 (cag) (Entered: 09/17/2002)

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9/16/02 85 Opposition by British Columbia to motion to strike portions of decls of Kenneth Spafford and Valerie Lambert re motion to dismiss [79-1]; NUNC PRO TUNC to 9/13/02 (cag) (Entered: 09/17/2002)

9/16/02 86 Opposition by Reliant dfts to motion to dismiss cross cmp [59-1] (cag) (Entered: 09/17/2002)

9/16/02 87 Declaration of Todd R. Kinnear re motion response [86-1] (cag) (Entered: 09/17/2002)

9/16/02 88 Declaration of John Pespisa re motion response [86-1] (cag) (Entered: 09/17/2002)

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9/17/02	90	Ex Parte Application by Reliant dfts for leave to file 2nd suppl brief in opposition to motion to remand and motion to dismiss (cag) (Entered: 09/19/2002)
9/17/02	91	Notice of filing by Reliant dfts of material under seal (cag) (Entered: 09/19/2002)

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9/18/02	96	Sealed 2nd suppl brief in opposition to motion to remand and motion to dismiss (pursuant to Court Order) (cag) (Entered: 09/19/2002)
9/18/02	97	Sealed decl of Todd R. Kinnear (pursuant to Court Order) re [96-1] (cag) (Entered: 09/19/2002)
9/18/02	98	Sealed notice of lodgment (pursuant to Court Order) re [96-1] (cag) (Entered: 09/19/2002)
9/18/02	99	Objections by British Columbia to [96-1] (cag) (Entered: 09/19/2002)

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10/18/02	105	Order by Judge Robert H. Whaley granting ex parte application for leave to file 2nd suppl brief in opposition to motion to remand and motion to dismiss [90-1]; crsdfts BC Hydro and Powerex shall have 10 days from date of this order to file 2nd suppl brief (cag) (Entered: 10/21/2002)
10/28/02	106	Minutes: Enter Order recusing all Mag Judges for SDCA; Case referred to case Unassigned (cag) (Entered: 10/28/2002)
10/29/02	107	Reply by Reliant Energy Svc, Reliant Ormond Beach, Reliant Etiwanda Inc,

		Reliant Ellwood, Reliant Mandalay Inc, Reliant Coolwater to opposition to motion to dismiss master complaint [21-1] (cag) (Entered: 10/30/2002)
10/29/02	108	Declaration of Reliant dfts re motion reply [107-1] (cag) (Entered: 10/30/2002)
10/29/02	109	Request for Judicial Notice by Reliant dfts re motion reply 107 (cag) (Entered: 10/30/2002)
10/29/02	110	Notice of lodgment by Reliant dfts re motion reply 107 (cag) (Entered: 10/30/2002)
11/4/02	111	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)
11/4/02	112	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)
11/4/02	113	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)
11/4/02	114	Document Sealed (pursuant to Court Order) (ksr) (Entered: 11/05/2002)

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12/16/02	120	Ex Parte Application of Duke Energy and Reliant Energy dfts for stay of remand pending resolution of appeal, ruling on pending appl for service order (cag) (Entered: 12/17/2002)
12/16/02	122	Notice of appeal by cross-claimant Reliant Energy Svc, cross-claimant Reliant Ormond Beach, cross-claimant Reliant Etiwanda Inc, cross-claimant Reliant Ellwood, cross-claimant Reliant Mandalay Inc, cross-claimant Reliant Coolwater from Dist. Court decision entered on 12/17/02. Receipt No/Amt of Fee: Not

		Paid [121-2] (dkt clerk) Modified on 01/30/2006 (Entered: 12/18/2002)
12/17/02	121	Order by Judge Robert H. Whaley granting plas' motion to remand, motion to strike and motion to sever cross-complaints; remanding case to state court (per req of ct, order not sent to state ct until appl to stay remand heard) (cag) (Entered: 12/17/2002)
12/17/02	123	Ex Parte Application by Powerex Corp for stay of remand pending resolution of appeal to 9th circuit (cag) (Entered: 12/18/2002)
12/18/02		Notice of appeal sent to Circuit Court [122-1] (dkt clerk) (Entered: 12/18/2002)
		* * * * *
12/18/02	148	Notice of appeal by defendant Duke Energy Trading from Dist. Court decision entered on 12/17/02. Receipt No/Amt of Fee: $150.00 [121-2], t/w Representation Statement (dkt clerk) Modified on 01/30/2006 (Entered: 02/07/2003)
		* * * * *
12/30/02	126	Notification by Circuit Court of Appellate Docket Number [122-1] 02-57200 (dkt clerk) (Entered: 12/31/2002)
		* * * * *
1/7/03	130	Motion by USA for clarification; [motion referred to Judge Robert H. Whaley] (cag) (Entered: 01/09/2003)
1/10/03	131	Notice of Motion and Motion by Powerex Corp for reconsideration; [motion referred to Judge Robert H. Whaley] (cag) (Entered: 01/14/2003)

1/10/03	132	Memorandum of points and authorities by Powerex Corp in support of motion for reconsideration [131-1] (cag) (Entered: 01/14/2003)
1/10/03	133	LR 7.1(i) Certified Statement by Powerex Corp re motion for reconsideration [131-1] (cag) (Entered: 01/14/2003)
1/13/03	134	Reply by Powerex Corp re appl for stay of remand [123-1] (cag) (Entered: 01/14/2003)
1/13/03	135	Reply by Duke Energy and Reliant Entity dfts re appl for stay of remand [120-1] (cag) (Entered: 01/14/2003)
1/13/03	136	Declaration of John T. Brooks re application for stay of remand [120-1] (cag) (Entered: 01/14/2003)

* * * * *

1/13/03	138	Notice of appeal by cross-defendant Powerex Corp from Dist. Court decision entered on 12/17/02. Receipt No/Amt of Fee: $105.00, 90331 [121-2] (dkt clerk) Modified on 01/30/2006 (Entered: 01/14/2003)

* * * * *

1/27/03	141	Order by Judge Robert H. Whaley denying ex parte application to stay remand [120-1], denying ex parte application to stay remand [123-1], re motion for reconsideration [131-1]: opposition to motion due by 1/31/03, reply to opposition to motion due by 2/5/03, motion hearing set for 2/7/03 Judge Robert Whaley w/o oral argument (cag) (Entered: 01/27/2003)

* * * * *

2/3/03	143	Order by Judge Robert H. Whaley denying motion for clarification [130-1] (cag) (Entered: 02/03/2003)
2/3/03	144	Notification by Circuit Court of Appellate Docket Number [138-1] 03-55176 (dkt clerk) (Entered: 02/03/2003)

* * * * *

2/5/03	147	Reply by Powerex Corp to opposition to motion for reconsideration [131-1] (cag) (Entered: 02/06/2003)
2/7/03		Notice of appeal sent to Circuit Court [148-1] (dkt clerk) (Entered: 02/07/2003)
2/13/03	151	Notification by Circuit Court of Appellate Docket Number [138-1] 03-55249 (dkt clerk) Modified on 02/14/2003 (Entered: 02/14/2003)

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2/14/03	153	Notice of appeal by cross-defendant USA, cross-defendant Department of Energy, cross-defendant Bonneville Power, cross-defendant Western Area Power from Dist. Court decision entered on 12/17/02. [121-2]; no fee required (dkt clerk) Modified on 01/30/2006 (Entered: 02/18/2003)
2/18/03		Notice of appeal sent to Circuit Court [153-1] (dkt clerk) (Entered: 02/18/2003)

* * * * *

2/24/03		Transcript of motion hrg on 1/23/03 before Judge Whaley filed (original in 02cv990) (cag) (Entered: 02/25/2003)
2/26/03	155	Notification by Circuit Court of Appellate Docket Number [153-1] 03-55322 (dkt clerk) (Entered: 02/26/2003)

* * * * *

5/27/03	157	Copy of Appellate Court Order Staying the proceedings for 120 days as to NRG; the briefing schedule remains in place as to the remainder of the parties (dkt clerk) (Entered: 05/28/2003)
9/2/03	158	Copy of Appellate Court Order referring the 6/25/03 motion to intervene or for leave to file an Amici Curiae is referred to panel assigned to hear the merits of these consolidated appeals (dkt clerk) (Entered: 09/03/2003)

* * * * *

1/16/04	161	Stipulation to dismiss cross cmp against Salt River Project and Order thereon by Judge Robert H. Whaley; terminating party Salt River Project (cag) (Entered: 01/16/2004)
1/21/04	162	Order by Judge Robert H. Whaley denying as moot motion for reconsideration [131-1] w/ leave to renew (cag) (Entered: 01/21/2004)

* * * * *

3/14/05		Received judgement from USCA. Forwarded copy to Court Clerk for calendar. (affirmed in part/vacated and remanded) (dkt clerk) (Entered: 03/22/2005)
5/11/05	166	Order by Judge Robert H. Whaley terminating dfts Western Area Power, Bonneville Power pursuant to 9th Circuit order (cag) (Entered: 05/12/2005)
6/27/06	167	Certified copy of judgment from USCA affirming the appeal is entered and filed. (dkt clerk) (Entered: 06/27/2006)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-55118

DUKE ENERGY TRADING AND MARKETING, LLC, ET AL.,
Cross-claimants – Appellees,

v.

POWEREX CORP., ET AL.,
Cross-defendants – Appellants.

DOCKET PROCEEDINGS

DATE	DOCKET ENTRY
1/22/03	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): NO. * * * * * [03-55118] (mhf) [03-55118]
	* * * * *
2/6/03	Filed Appellant Powerex Corp.'s emergency motion under Circuit Rule 27-3 for consolidation of appeals (02-57200, 02-57202, 02-57210, 03-55118, 03-55131, 03-55176) and establishment of deadline for response to show cause order, corporate disclosure statement for appellant Powerex Corp., served on 2/6/03 (to MOATT) [03-55118] (ru) [03-55118]
	* * * * *
2/20/03	Filed order (Ferdinand F. FERNANDEZ, Ronald M. GOULD): The court sua sponte

consolidates these appeals. To better structure these proceedings, the court has designated Reliant Energy Services, Inc., and Duke Energy Trading and Marketing, LLC, et al., as appellants/cross-appellees. Powerex Corp., et al. has been designated as appellees/cross-appellants. The clerk shall amend the docket to reflect the above caption for these appeals. The court has received and reviewed aplts' response to this court's 1/28/03 order to show cause in no. 02-57202. We conclude that the court has jurisdiction to entertain the appeals from the DC's 12/13/02 remand order . . . Accordingly, the order to show cause is DISCHARGED. Aplts' 2/7/03 emergency motion to stay the DC's remand order pending this court's ruling on the order to show cause is DENIED as moot. However, the court sua sponte GRANTS a stay of the DC's remand order pending these appeals. All prevsly established briefing schedules are VACATED. The following briefing schedule shall govern these consolidated appeals. * * * * * (PARTIES FAXED/MOATT) [02-57200 [*et al.*]] (hh) [02-57200 [*et al.*]]

* * * * *

3/6/03 Filed plaintiff-appellees' motion for reconsideration of 2/20/03 order discharging order to show cause and staying remand pending appeal; served on 3/6/03 (to MOATT) [02-57200 [*et al.*]] (hh) [02-57200 [*et al.*]]

3/7/03 Filed order MOATT (JM) The court sua sponte consolidated these appeals to better structure these proceedings, in addition to Powerex Corp., the court designates Bonneville Power Administration and Western

Power Administration as appellees/cross-appellants. The briefing schedule established in the court's 2/20/03 order filed in lead no. 02-57200 shall apply to these consolidated appeals. The clerk shall amend the docket to reflect the above caption for these appeals. [02-57200 [*et al.*]] (hh) [02-57200 [*et al.*]]

* * * * *

6/16/03 Received original and 15 copies Reliant Energy Serv, Reliant Ormond Beach, Reliant Energy Etiwa, Reliant Energy Ellw, Reliant Energy Manda, Reliant Energy Cool, Duke Energy Trading, Duke Energy Morro, Duke Energy Moss, Duke Energy South, Duke Energy Oakland 1st cross-appeal brief, (Informal: NO) of 67 pages, with 4 excerpts of record, served on 6/16/03 deficient: Motion to seal the 1st brief is PENDING. Notified counsel. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

6/16/03 From Aplts Reliant Energy Serv Reliant Ormond Beach, Reliant Energy Etiwa, Reliant Energy Ellw, Reliant Energy Manda, Reliant Energy Cool, Aples Duke Energy Trading, Duke Energy Morro, Duke Energy Moss, Duke Energy South, Duke Energy Oakland, received notification to seal opening brief of aplt/cross aples and volume IV of Excerpts of Record served on 6/16/03. CASEFILE (ji) [02-57200 [*et al.*]]

6/16/03 Filed original and 15 copies UNDER SEAL (BRIEF AND VOL 4 EOR) Reliant Energy Serv, Reliant Ormond Beach, Reliant Energy Etiwa, Reliant Energy Ellw, Reliant Energy Manda, Reliant Energy Cool, Duke Energy Trading, Duke Energy Morro, Duke

Energy Moss, Duke Energy South, Duke Energy Oakland, brief on cross-appeal (Informal: NO) of 67 pages and 5 copies of excerpts of record in 4 vols; served on 6/16/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

6/27/03 Received orig. and 15 copies Arizona Electric's brief 28 pages deficient: Motion to file MOATT. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

7/28/03 Filed Under Seal original and 15 copies appellee British Columbia Hyd's 49 pages brief, & 5 copies of Vol 2 Exc., 2 vols Excerpts of record; served on 7/28/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

7/28/03 Filed original and 15 copies Powerex Corp second brief on cross-appeal (Informal: NO) of 38 pages and 5 copies excerpts of record in 5 vols; served on 7/28/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

7/28/03 Filed original and 15 copies Bonneville Power Ad, Western Area Pow Ad second brief on cross-appeal (Informal: NO) of 24 pages and 0 excerpts of record; (minor defcy: All consolidated cases number be listed on the cover sheet.); served on 7/25/03 [dktd in combination with consolidated cases 02-57200 [*et al.*]] [03-55118] (cu) [03-55118]

8/6/03 Rec'd notice of errata and corrected pages to opening brief from Appellee Powerex Corp, served 8/5/03 (RECORDS) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

8/6/03 Rec'd notice of errata and corrected pages to ans brief from Appellee British Columbia

Hyd and Power Authority Filed Under Seal, served 8/5/03 (RECORDS) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

9/5/03 Filed order (Ferdinand F. FERNANDEZ, Ronald M. GOULD): Aples' motion for recon of the court's 2/20/03 order is DENIED. CITE. Aples' motion for an ext of time to file an answering brf is GRANTED. * * * * * [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

10/15/03 Filed original and 15 copies aples People of the State, Ruth Hendrick, Cruz M. Bustamante, Barbara Matthews, Sweetwater Authority, Pamela R. Gordon's 46 pages brief, 1 Exc. vol; served on 10/14/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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12/4/03 Filed original and 15 copies Reliant Energy Serv in 02-57200, Reliant Ormond Beach in 02-57200, Reliant Energy Etiwa in 02-57200, Reliant Energy Ellw in 02-57200, Reliant Energy Manda in 02-57200, Reliant Energy Cool in 02-57200, Duke Energy Trading in 03-55118, Duke Energy Morro in 03-55118, Duke Energy Moss in 03-55118, Duke Energy South in 03-55118, Duke Energy Oakland in 03-55118 third brief on cross-appeal (Informal: NO) of 35 pages and 5 copies 0 excerpts of record; (minor defcy: Incorrect color covers.); served on 12/4/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

12/18/03 Received orig. and 15 copies British Columbia Hydro and Power Authority reply brief

(Informal: NO) of 18 pages; with supplemental excerpts of record in 1 volume; served on 2/18/03 (deficient: Aple is not part of cross appeal). Notified counsel. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

12/18/03 Filed original and 15 copies aples/cross aplts Bonneville Power Admin and Western Area Power Admin reply brief, (Informal: NO) of 10 pages; served on 12/17/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

12/18/03 Filed original and 15 copies aple/cross aplt Powerex Corp reply brief, (Informal: NO) of 27 pages; with excerpts in 1 volume; served on 12/18/03 (minor defcy: Incorrect color covers) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

12/18/03 Filed original and 15 copies British Columbia Hydro and Power Authority reply brief, (Informal: NO) 18 pages; supplemental excerpts in 1 vol; served on 12/18/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

3/5/04 Filed Arizona Electric additional citations, served on 3/5/04 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/18/04 Filed aplts/cross-aples Reliant and Duke additional citations, served on 3/17/04 (RECORDS) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/23/04 Filed order (Mary M. SCHROEDER, Johnnie B. RAWLINSON): Nos. 03-74526 and 03-74730 were consolidated with no. 01-71051, et al. Nos. 03-74252, 03-74415, 03-74526, 03-74527, 03-74531, 03-74547, 03-74548, 03-74550, 03-74582, 03-74590,

03-74592, 03-74604, 03-74629, 03-74631, 03-74647, 03-74653, 03-74654, 03-74655, 04-70564 and 04-70637 are consolidated with no. 01-71051, et al. Pursuant to the provisions of the Aug. 21, 2002 order, any entity granted leave to intvn in one case is deemed to have been granted leave to intvn in all of the consolidated cases. Accordingly, the mtns of Enron Mrktng, Duke Energy, Merrill Lynch, Portland G.E.Co., Mirant Americas, Reliant Energy Power Generation, et al., Port of Seattle, Avista Corp., et al., L.A. Dept of Water and Power, CA Electricity Oversight Board, Pinnacle West Capital Corp., et al., Sempra Energy Trading Co., Williams Power Co., CA ISO, Northern CA Transmission Agency, So.CA Edison, PacifiCorp, City of Santa Clara, et al., and the TransCanada Energy, Ltd., for leave to intvn are denied as unnecessary. The mtns of the People of the State of CA to intvn in No. 03-74252, 03-74527, 03-74531, 03-74547, 03-74548, 03-74550, 03-74582, 03-74590, 03-74592, 03-74604, 03-74629, 03-74631, 03-74647, 03-74653, 03-74654, 03-74655, 03-74730 and the PUC to intvn in nos. 03-74527, 03-74531, 03-74582, 03-74547, 03-74548, 03-74550, 03-74590, 03-74592, 03-74604, 03-74629, 03-74631, 03-74653, 03-74654, 03-74655 and 03-74730 are granted. The mtn of the People of the State of CA for leave to intvn in NO. 04-70564 is denied in view of the consolidation of no. 04-70564 and 04-70637. The mtn of Coral Power for leave to file a late mtn to intvn is granted. In view of the consolidation of nos. 03-74252, 03-74523, 03-74531, 03-74548, 03-74582, 03-74654, 03-74415, 03-74526, 03-74527, 03-74531, 03-74547,

03-74548, 03-74647, 03-74582, 03-74590, 03-74592, 03-74604, 03-74629, 03-74647, 03-74653, 03-74654, 03-74655 and 03-74730, the mtn of the following entities to intvn in other petitions challenging the same rmd proceedings are denied as unnecessary; Morgan Stanley, Tucson Electric Power Co., PG&E, El Paso Merchant Energy, Puget Sound Energy, Inc., Modesto Irrigation District, et al., Constellation Power, City of Vernon and Powerex. If any petitioner wishes to additionally participate as an intvnr in any of the cases consolidated by this order, it may file a renewed mtn upon the lifting of the stay. The renewed mtn shall state with specificity why movant's interests will not be addressed by another pty. (cite) Any renewed mtn shall also state movant's agreement to: (1) limit the combined length of the opening and intrvnr brief to 14,000 words, and (2) waive the filing of the reply brief. The mtns of Tucson Electric, et al., for leave to intvn in nos. 03-74647, 04-70564 and 04-70637 and PG&E and Powerex to intvn in no. 04-70564 are granted. However, the arguments offered as intvnrs must be included in the petitioners' briefs. In view of the provisions of the March 12, 2004 order staying proceedings, the mtns of IdaCorp, Salt River Project, Constellation Power, State Water Contractors, Tucson Electric, Automated Power Exchange, Morgan Stanley, Energy Plus, El Paso Merchant, City of Seattle, Portland G.E., Modesto Irrigation District, Powerex, PPL Energy Plus, and Sacramento Municipal to vacate the schedule are denied as moot. Within 14 days from the date of this order, Powerex Corp. shall tender the remainder of

the dkt fee. Failure to satisfy the fee requirement will result in the dismissal of no. 03-74547 w/o further ntc. [re-dktd by je to include consolidated cases] [01-71051 [*et al.*]] (je) [01-71051 [*et al.*]]

* * * * *

3/25/04 Filed order (Deputy Clerk: gss/promo): The court is in receipt of NRG Energy's bankruptcy status report which states that NRG Energy has emerged from bankrupcy. On or before 4/23/04, NRG Energy shall file their answering brf, a ntc of joinder in another aples' brf pursuant to Ninth Cir.R. 28-4, or if aple NRG Energy does not elect to file a brf, aple NRG Energy shall notify the court by ltr on or before the due date of the ans brf pursuant to Ninth Cir.R. 31-2.3. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/31/04 Received Timothy B Taylor for NRG Energy Inc letter dated 3/29/04 re: NRG Energy will not be filing a brief. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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5/12/04 Filed aples additional citations, served on 5/12/04 (panel) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

5/13/04 Filed order (Deputy Clerk: hh) The mtn of cross-defs Arizona Electric Power Cooperative, Inc. et al. to appear as cross-aplts is granted in part. Movants may appear as cross-aplts for the limited purpose of having their proffered brf filed. The brf accompanying Movant's motion is ordered filed. Aplts Reliant Energy, et al. may file a responsive brf by 5/28/04. (phone/fax) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

6/14/04 ARGUED AND SUBMITTED TO Mary M. SCHROEDER, William C. CANBY, Richard C. TALLMAN [02-57200 [*et al.*]] (ea) [02-57200 [*et al.*]]

* * * * *

12/8/04 FILED OPINION: AFFIRMED IN PART; VACATED IN PART and REMANDED. Costs are awarded to BPA, WAPA, and BC Hydro and against PowerEx. (Terminated on the Merits after Oral Hearing; Affirmed in part; Vacated in part and Remanded; Written, Signed, Published. Mary M. SCHROEDER, author; William C. CANBY; Richard C. TALLMAN. FILED AND ENTERED JUDGMENT. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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1/26/05 Filed order (Mary M. SCHROEDER): The mtn of x-aplt Powerex' mtn for an ext of time to file a petn for rhrg and sugg for rhrg en banc is granted. Aple/x-aplt is granted an ext of 7 days from the date of this order within which to file a petn for rhrg and sugg for rhrg en banc. [02-57200 [*et al.*]] (crw) [02-57200 [*et al.*]]

2/2/05 Filed original and 50 copies Appellee/cross aplt Powerex Corp petition for panel rehearing and petition for rehearing en banc 20 pages, served on 2/1/05 (panel and active judges) (ji) [02-57200 [*et al.*]]

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3/3/05 Filed order (Mary M. SCHROEDER, William C. CANBY, Richard C. TALLMAN): . . . The petition for panel rehearing and the

petition for rehearing en banc are denied. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/11/05 MANDATE ISSUED. Costs taxed against appellants Reliant and Duke for $3617.10. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/16/05 Filed aple/x-aplt Powerex Corp motion to recall the mandate. served on 3/15/05 [panel] (ji) [02-57200 [*et al.*]]

* * * * *

3/25/05 Filed aples opposition to aple/x-aplt Powerex Corp to recall mdt. served on 3/25/05 PANEL [02-57200 [*et al.*]] (crw) [02-57200 [*et al.*]]

4/6/05 Filed order (Mary M. SCHROEDER): Aple/cross aplt, Powerex Corp.'s mtn to recall the mandate is denied. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

6/1/05 Received letter from the Supreme Court dated 5/23/05 re: ext time within to file a petition for a writ of certiorari. Time extended until 7/1/05. (CASEFILE) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

6/27/05 Received letter from the Supreme Court dated 6/22/05 re: granting further ext of time to file cert to 7/15/05. casefile. [02-57200 [*et al.*]] (crw) [02-57200 [*et al.*]]

7/22/05 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 5-85 filed on 7/15/05. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

1/26/07 Received letter from the Supreme Court dated 1/19/07 re: granting the mtn Government of Canada for leave to file a brf as amicus curiae; the petition for a writ of cert is granted lmt to question 1 presented by the

petition and parties are directed to brf and argue the following question: Whether the court of appeal had jurisdiction to review the district court's remand order, notwithstanding 28 USC Sec. 1447(d). [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-55131

RELIANT ENERGY SERVICES, INC., ET AL.,
Cross-claimants – Appellees,

v.

POWEREX CORP., ET AL.,
Cross-defendants – Appellants.

DOCKET PROCEEDINGS

DATE	DOCKET ENTRY
1/22/03	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): no. * * * * * [03-55131] (dg) [03-55131]
	* * * * *
2/20/03	Filed order (Ferdinand F. FERNANDEZ, Ronald M. GOULD): The court sua sponte consolidates these appeals. To better structure these proceedings, the court has designated Reliant Energy Services, Inc., and Duke Energy Trading and Marketing, LLC, et al., as appellants/cross-appellees. Powerex Corp., et al. has been designated as appellees/cross-appellants. The clerk shall amend the docket to reflect the above caption for these appeals. The court has received and reviewed aplts' response to this court's 1/28/03 order to show cause in no. 02-57202. We conclude that the court has

jurisdiction to entertain the appeals from the DC's 12/13/02 remand order . . . Accordingly, the order to show cause is DISCHARGED. Aplts' 2/7/03 emergency motion to stay the DC's remand order pending this court's ruling on the order to show cause is DENIED as moot. However, the court sua sponte GRANTS a stay of the DC's remand order pending these appeals. All prevsly established briefing schedules are VACATED. The following briefing schedule shall govern these consolidated appeals. * * * * * (PARTIES FAXED/MOATT) [02-57200 [*et al.*]] (hh) [02-57200 [*et al.*]]

* * * * *

3/6/03 Filed plaintiff-appellees' motion for reconsideration of 2/20/03 order discharging order to show cause and staying remand pending appeal; served on 3/6/03 (to MOATT) [02-57200 [*et al.*]] (hh) [02-57200 [*et al.*]]

3/7/03 Filed order MOATT (JM) The court sua sponte consolidated these appeals to better structure these proceedings, in addition to Powerex Corp., the court designates Bonneville Power Administration and Western Power Administration as appellees/cross-appellants. The briefing schedule established in the court's 2/20/03 order filed in lead no. 02-57200 shall apply to these consolidated appeals. The clerk shall amend the docket to reflect the above caption for these appeals. [02-57200 [*et al.*]] (hh) [02-57200 [*et al.*]]

* * * * *

6/16/03 Received original and 15 copies Reliant Energy Serv, Reliant Ormond Beach, Reliant

Energy Etiwa, Reliant Energy Ellw, Reliant Energy Manda, Reliant Energy Cool, Duke Energy Trading, Duke Energy Morro, Duke Energy Moss, Duke Energy South, Duke Energy Oakland 1st cross-appeal brief, (Informal: NO) of 67 pages, with 4 excerpts of record, served on 6/16/03 deficient: Motion to seal the 1st brief is PENDING. Notified counsel. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

6/16/03 From Aplts Reliant Energy Serv Reliant Ormond Beach, Reliant Energy Etiwa, Reliant Energy Ellw, Reliant Energy Manda, Reliant Energy Cool, Aples Duke Energy Trading, Duke Energy Morro, Duke Energy Moss, Duke Energy South, Duke Energy Oakland, received notification to seal opening brief of aplt/cross aples and volume IV of Excerpts of Record served on 6/16/03. CASEFILE (ji) [02-57200 [*et al.*]]

6/16/03 Filed original and 15 copies UNDER SEAL (BRIEF AND VOL 4 EOR) Reliant Energy Serv, Reliant Ormond Beach, Reliant Energy Etiwa, Reliant Energy Ellw, Reliant Energy Manda, Reliant Energy Cool, Duke Energy Trading, Duke Energy Morro, Duke Energy Moss, Duke Energy South, Duke Energy Oakland, brief on cross-appeal (Informal: NO) of 67 pages and 5 copies of excerpts of record in 4 vols; served on 6/16/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

6/27/03 Received orig. and 15 copies Arizona Electric's brief 28 pages deficient: Motion to file MOATT. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

7/28/03 Filed original and 15 copies Bonneville Power Ad, Western Area Pow Ad second brief on cross-appeal (Informal: NO) of 24 pages and 0 excerpts of record; (minor defcy: All consolidated cases number be listed on the cover sheet.); served on 7/25/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

7/28/03 Filed Under Seal original and 15 copies appellee British Columbia Hyd's 49 pages brief, & 5 copies of Vol 2 Exc., 2 vols Excerpts of record; served on 7/28/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

7/28/03 Filed original and 15 copies Powerex Corp second brief on cross-appeal (Informal: NO) of 38 pages and 5 copies excerpts of record in 5 vols; served on 7/28/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

8/6/03 Rec'd notice of errata and corrected pages to opening brief from Appellee Powerex Corp, served 8/5/03 (RECORDS) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

8/6/03 Rec'd notice of errata and corrected pages to ans brief from Appellee British Columbia Hyd and Power Authority Filed Under Seal, served 8/5/03 (RECORDS) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

9/5/03 Filed order (Ferdinand F. FERNANDEZ, Ronald M. GOULD): Aples' motion for recon of the court's 2/20/03 order is DENIED. CITE. Aples' motion for an ext of time to file an answering brf is GRANTED. * * * * * [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

10/15/03 Filed original and 15 copies aples People of the State, Ruth Hendrick, Cruz M. Bustamante, Barbara Matthews, Sweetwater Authority, Pamela R. Gordon's 46 pages brief, 1 Exc. vol; served on 10/14/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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12/4/03 Filed original and 15 copies Reliant Energy Serv in 02-57200, Reliant Ormond Beach in 02-57200, Reliant Energy Etiwa in 02-57200, Reliant Energy Ellw in 02-57200, Reliant Energy Manda in 02-57200, Reliant Energy Cool in 02-57200, Duke Energy Trading in 03-55118, Duke Energy Morro in 03-55118, Duke Energy Moss in 03-55118, Duke Energy South in 03-55118, Duke Energy Oakland in 03-55118 third brief on cross-appeal (Informal: NO) of 35 pages and 5 copies 0 excerpts of record; (minor defcy: Incorrect color covers.); served on 12/4/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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12/18/03 Received orig. and 15 copies British Columbia Hydro and Power Authority reply brief (Informal: NO) of 18 pages; with supplemental excerpts of record in 1 volume; served on 2/18/03 (deficient: Aple is not part of cross appeal). Notified counsel. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

12/18/03 Filed original and 15 copies aples/cross aplts Bonneville Power Admin and Western Area Power Admin reply brief, (Informal: NO) of 10 pages; served on 12/17/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

12/18/03 Filed original and 15 copies aple/cross aplt Powerex Corp reply brief, (Informal: NO) of 27 pages; with excerpts in 1 volume; served on 12/18/03 (minor defcy: Incorrect color covers) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

12/18/03 Filed original and 15 copies British Columbia Hydro and Power Authority reply brief, (Informal: NO) 18 pages; supplemental excerpts in 1 vol; served on 12/18/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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3/5/04 Filed Arizona Electric additional citations, served on 3/5/04 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/18/04 Filed aplts/cross-aples Reliant and Duke additional citations, served on 3/17/04 (RECORDS) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/23/04 Filed order (Mary M. SCHROEDER, Johnnie B. RAWLINSON): Nos. 03-74526 and 03-74730 were consolidated with no. 01-71051, et al. Nos. 03-74252, 03-74415, 03-74526, 03-74527, 03-74531, 03-74547, 03-74548, 03-74550, 03-74582, 03-74590, 03-74592, 03-74604, 03-74629, 03-74631, 03-74647, 03-74653, 03-74654, 03-74655, 04-70564 and 04-70637 are consolidated with no. 01-71051, et al. Pursuant to the provisions of the Aug. 21, 2002 order, any entity granted leave to intvn in one case is deemed to have been granted leave to intvn in all of the consolidated cases. Accordingly, the mtns of Enron Mrktng, Duke Energy, Merrill Lynch, Portland G.E.Co., Mirant Americas, Reliant Energy Power Genera-

tion, et al., Port of Seattle, Avista Corp., et al., L.A. Dept of Water and Power, CA Electricity Oversight Board, Pinnacle West Capital Corp., et al., Sempra Energy Trading Co., Williams Power Co., CA ISO, Northern CA Transmission Agency, So.CA Edison, PacifiCorp, City of Santa Clara, et al., and the TransCanada Energy, Ltd., for leave to intvn are denied as unnecessary. The mtns of the People of the State of CA to intvn in No. 03-74252, 03-74527, 03-74531, 03-74547, 03-74548, 03-74550, 03-74582, 03-74590, 03-74592, 03-74604, 03-74629, 03-74631, 03-74647, 03-74653, 03-74654, 03-74655, 03-74730 and the PUC to intvn in nos. 03-74527, 03-74531, 03-74582, 03-74547, 03-74548, 03-74550, 03-74590, 03-74592, 03-74604, 03-74629, 03-74631, 03-74653, 03-74654, 03-74655 and 03-74730 are granted. The mtn of the People of the State of CA for leave to intvn in NO. 04-70564 is denied in view of the consolidation of no. 04-70564 and 04-70637. The mtn of Coral Power for leave to file a late mtn to intvn is granted. In view of the consolidation of nos. 03-74252, 03-74523, 03-74531, 03-74548, 03-74582, 03-74654, 03-74415, 03-74526, 03-74527, 03-74531, 03-74547, 03-74548, 03-74647, 03-74582, 03-74590, 03-74592, 03-74604, 03-74629, 03-74647, 03-74653, 03-74654, 03-74655 and 03-74730, the mtn of the following entities to intvn in other petitions challenging the same rmd proceedings are denied as unnecessary; Morgan Stanley, Tucson Electric Power Co., PG&E, El Paso Merchant Energy, Puget Sound Energy, Inc., Modesto Irrigation District, et al., Constellation Power, City of Vernon and Powerex. If any petitioner

wishes to additionally participate as an intvnr in any of the cases consolidated by this order, it may file a renewed mtn upon the lifting of the stay. The renewed mtn shall state with specificity why movant's interests will not be addressed by another pty. (cite) Any renewed mtn shall also state movant's agreement to: (1) limit the combined length of the opening and intrvnr brief to 14,000 words, and (2) waive the filing of the reply brief. The mtns of Tucson Electric, et al., for leave to intvn in nos. 03-74647, 04-70564 and 04-70637 and PG&E and Powerex to intvn in no. 04-70564 are granted. However, the arguments offered as intvnrs must be included in the petitioners' briefs. In view of the provisions of the March 12, 2004 order staying proceedings, the mtns of IdaCorp, Salt River Project, Constellation Power, State Water Contractors, Tucson Electric, Automated Power Exchange, Morgan Stanley, Energy Plus, El Paso Merchant, City of Seattle, Portland G.E., Modesto Irrigation District, Powerex, PPL Energy Plus, and Sacramento Municipal to vacate the schedule are denied as moot. Within 14 days from the date of this order, Powerex Corp. shall tender the remainder of the dkt fee. Failure to satisfy the fee requirement will result in the dismissal of no. 03-74547 w/o further ntc. [re-dktd by jc to include consolidated cases] [01-71051 [*et al.*]] (je) [01-71051 [*et al.*]]

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3/25/04 Filed order (Deputy Clerk: gss/promo): The court is in receipt of NRG Energy's bankruptcy status report which states that NRG Energy has emerged from bankrupcy. On or

before 4/23/04, NRG Energy shall file their answering brf, a ntc of joinder in another aples' brf pursuant to Ninth Cir.R. 28-4, or if aple NRG Energy does not elect to file a brf, aple NRG Energy shall notify the court by ltr on or before the due date of the ans brf pursuant to Ninth Cir.R. 31-2.3. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/31/04 Received Timothy B Taylor for NRG Energy Inc letter dated 3/29/04 re: NRG Energy will not be filing a brief. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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5/12/04 Filed aples additional citations, served on 5/12/04 (panel) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

5/13/04 Filed order (Deputy Clerk: hh) The mtn of cross-defs Arizona Electric Power Cooperative, Inc. et al. to appear as cross-aplts is granted in part. Movants may appear as cross-aplts for the limited purpose of having their proffered brf filed. The brf accompanying Movant's motion is ordered filed. Aplts Reliant Energy, et al. may file a responsive brf by 5/28/04. (phone/fax) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

6/14/04 ARGUED AND SUBMITTED TO Mary M. SCHROEDER, William C. CANBY, Richard C. TALLMAN [02-57200 [*et al.*]] (ca) [02-57200 [*et al.*]]

* * * * *

12/8/04 FILED OPINION: AFFIRMED IN PART; VACATED IN PART and REMANDED. Costs are awarded to BPA, WAPA, and BC Hydro and against PowerEx. (Terminated

on the Merits after Oral Hearing; Affirmed in part; Vacated in part and Remanded; Written, Signed, Published. Mary M. SCHROEDER, author; William C. CANBY; Richard C. TALLMAN. FILED AND ENTERED JUDGMENT. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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1/26/05 Filed order (Mary M. SCHROEDER): The mtn of x-aplt Powerex' mtn for an ext of time to file a petn for rhrg and sugg for rhrg en banc is granted. Aple/x-aplt is granted an ext of 7 days from the date of this order within which to file a petn for rhrg and sugg for rhrg en banc. [02-57200 [*et al.*]] (crw) [02-57200 [*et al.*]]

2/2/05 Filed original and 50 copies Appellee/cross aplt Powerex Corp petition for panel rehearing and petition for rehearing en banc 20 pages, served on 2/1/05 (panel and active judges) (ji) [02-57200 [*et al.*]]

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3/3/05 Filed order (Mary M. SCHROEDER, William C. CANBY, Richard C. TALLMAN): . . . The petition for panel rehearing and the petition for rehearing en banc are denied. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/11/05 MANDATE ISSUED. Costs taxed against appellants Reliant and Duke for $3617.10. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/16/05 Filed aple/x-aplt Powerex Corp motion to recall the mandate. served on 3/15/05 [panel] (ji) [02-57200 [*et al.*]]

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3/25/05	Filed aples opposition to aple/x-aplt Powerex Corp to recall mdt. served on 3/25/05 PANEL [02-57200 [*et al.*]] (crw) [02-57200 [*et al.*]]
4/6/05	Filed order (Mary M. SCHROEDER): Aple/cross aplt, Powerex Corp.'s mtn to recall the mandate is denied. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]
6/1/05	Received letter from the Supreme Court dated 5/23/05 re: ext time within to file a petition for a writ of certiorari. Time extended until 7/1/05. (CASEFILE) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]
6/27/05	Received letter from the Supreme Court dated 6/22/05 re: granting further ext of time to file cert to 7/15/05. casefile. [02-57200 [*et al.*]] (crw) [02-57200 [*et al.*]]
7/22/05	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 5-85 filed on 7/15/05. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]
1/26/07	Received letter from the Supreme Court dated 1/19/07 re: granting the mtn Government of Canada for leave to file a brf as amicus curiae; the petition for a writ of cert is granted lmt to question 1 presented by the petition and parties are directed to brf and argue the following question: Whether the court of appeal had jurisdiction to review the district court's remand order, notwithstanding 28 USC Sec. 1447(d). [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-55176

NRG ENERGY INC., ET AL.,
Defendants/Cross-claimants – Appellees,

v.

POWEREX CORP., ET AL.,
Cross-defendants – Appellants.

DOCKET PROCEEDINGS

DATE	DOCKET ENTRY
1/30/03	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS sent: no. * * * * * [03-55176, 02-57200] (jr) [02-57200, 03-55176]
	* * * * *
2/20/03	Filed order (Ferdinand F. FERNANDEZ, Ronald M. GOULD): The court sua sponte consolidates these appeals. To better structure these proceedings, the court has designated Reliant Energy Services, Inc., and Duke Energy Trading and Marketing, LLC, et al., as appellants/cross-appellees. Powerex Corp., et al. has been designated as appellees/cross-appellants. The clerk shall amend the docket to reflect the above caption for these appeals. The court has received and reviewed aplts' response to this

court's 1/28/03 order to show cause in no. 02-57202. We conclude that the court has jurisdiction to entertain the appeals from the DC's 12/13/02 remand order . . . Accordingly, the order to show cause is DISCHARGED. Aplts' 2/7/03 emergency motion to stay the DC's remand order pending this court's ruling on the order to show cause is DENIED as moot. However, the court sua sponte GRANTS a stay of the DC's remand order pending these appeals. All prevsly established briefing schedules are VACATED. The following briefing schedule shall govern these consolidated appeals. * * * * * (PARTIES FAXED/MOATT) [02-57200 [*et al.*]] (hh) [02-57200 [*et al.*]]

* * * * *

3/6/03 Filed plaintiff-appellees' motion for reconsideration of 2/20/03 order discharging order to show cause and staying remand pending appeal; served on 3/6/03 (to MOATT) [02-57200 [*et al.*]] (hh) [02-57200 [*et al.*]]

3/7/03 Filed order MOATT (JM) The court sua sponte consolidated these appeals to better structure these proceedings, in addition to Powerex Corp., the court designates Bonneville Power Administration and Western Power Administration as appellees/cross-appellants. The briefing schedule established in the court's 2/20/03 order filed in lead no. 02-57200 shall apply to these consolidated appeals. The clerk shall amend the docket to reflect the above caption for these appeals. [02-57200 [*et al.*]] (hh) [02-57200 [*et al.*]]

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6/16/03 Received original and 15 copies Reliant Energy Serv, Reliant Ormond Beach, Reliant Energy Etiwa, Reliant Energy Ellw, Reliant Energy Manda, Reliant Energy Cool, Duke Energy Trading, Duke Energy Morro, Duke Energy Moss, Duke Energy South, Duke Energy Oakland 1st cross-appeal brief, (Informal: NO) of 67 pages, with 4 excerpts of record, served on 6/16/03 deficient: Motion to seal the 1st brief is PENDING. Notified counsel. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

6/16/03 From Aplts Reliant Energy Serv Reliant Ormond Beach, Reliant Energy Etiwa, Reliant Energy Ellw, Reliant Energy Manda, Reliant Energy Cool, Aples Duke Energy Trading, Duke Energy Morro, Duke Energy Moss, Duke Energy South, Duke Energy Oakland, received notification to seal opening brief of aplt/cross aples and volume IV of Excerpts of Record served on 6/16/03. CASEFILE (ji) [02-57200 [*et al.*]]

6/16/03 Filed original and 15 copies UNDER SEAL (BRIEF AND VOL 4 EOR) Reliant Energy Serv, Reliant Ormond Beach, Reliant Energy Etiwa, Reliant Energy Ellw, Reliant Energy Manda, Reliant Energy Cool, Duke Energy Trading, Duke Energy Morro, Duke Energy Moss, Duke Energy South, Duke Energy Oakland, brief on cross-appeal (Informal: NO) of 67 pages and 5 copies of excerpts of record in 4 vols; served on 6/16/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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6/27/03 Received orig. and 15 copies Arizona Electric's brief 28 pages deficient: Motion to file

MOATT. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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7/28/03 Filed original and 15 copies Bonneville Power Ad, Western Area Pow Ad second brief on cross-appeal (Informal: NO) of 24 pages and 0 excerpts of record; (minor defcy: All consolidated cases number be listed on the cover sheet.); served on 7/25/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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7/28/03 Filed Under Seal original and 15 copies appellee British Columbia Hyd's 49 pages brief, & 5 copies of Vol 2 Exc., 2 vols Excerpts of record; served on 7/28/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

7/28/03 Filed original and 15 copies Powerex Corp second brief on cross-appeal (Informal: NO) of 38 pages and 5 copies excerpts of record in 5 vols; served on 7/28/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

8/6/03 Rec'd notice of errata and corrected pages to opening brief from Appellee Powerex Corp, served 8/5/03 (RECORDS) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

8/6/03 Rec'd notice of errata and corrected pages to ans brief from Appellee British Columbia Hyd and Power Authority Filed Under Seal, served 8/5/03 (RECORDS) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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9/5/03 Filed order (Ferdinand F. FERNANDEZ, Ronald M. GOULD): Aples' motion for recon of the court's 2/20/03 order is DENIED. CITE. Aples' motion for an ext of time to file

an answering brf is GRANTED. * * * * * [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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10/15/03 Filed original and 15 copies aples People of the State, Ruth Hendrick, Cruz M. Bustamante, Barbara Matthews, Sweetwater Authority, Pamela R. Gordon's 46 pages brief, 1 Exc. vol; served on 10/14/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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12/4/03 Filed original and 15 copies Reliant Energy Serv in 02-57200, Reliant Ormond Beach in 02-57200, Reliant Energy Etiwa in 02-57200, Reliant Energy Ellw in 02-57200, Reliant Energy Manda in 02-57200, Reliant Energy Cool in 02-57200, Duke Energy Trading in 03-55118, Duke Energy Morro in 03-55118, Duke Energy Moss in 03-55118, Duke Energy South in 03-55118, Duke Energy Oakland in 03-55118 third brief on cross-appeal (Informal: NO) of 35 pages and 5 copies 0 excerpts of record; (minor defcy: Incorrect color covers.); served on 12/4/03 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

12/18/03 Received orig. and 15 copies British Columbia Hydro and Power Authority reply brief (Informal: NO) of 18 pages; with supplemental excerpts of record in 1 volume; served on 2/18/03 (deficient: Aple is not part of cross appeal). Notified counsel. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

12/18/03 Filed original and 15 copies aples/cross aplts Bonneville Power Admin and Western Area Power Admin reply brief, (Informal: NO) of

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3/5/04 Filed Arizona Electric additional citations, served on 3/5/04 [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/18/04 Filed aplts/cross-aples Reliant and Duke additional citations, served on 3/17/04 (RECORDS) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/23/04 Filed order (Mary M. SCHROEDER, Johnnie B. RAWLINSON): Nos. 03-74526 and 03-74730 were consolidated with no. 01-71051, et al. Nos. 03-74252, 03-74415, 03-74526, 03-74527, 03-74531, 03-74547, 03-74548, 03-74550, 03-74582, 03-74590, 03-74592, 03-74604, 03-74629, 03-74631, 03-74647, 03-74653, 03-74654, 03-74655, 04-70564 and 04-70637 are consolidated with no. 01-71051, et al. Pursuant to the provisions of the Aug. 21, 2002 order, any entity granted leave to intvn in one case is deemed to have been granted leave to intvn in all of the consolidated cases. Accordingly, the mtns of Enron Mrktng, Duke Energy,

Merrill Lynch, Portland G.E.Co., Mirant Americas, Reliant Energy Power Generation, et al., Port of Seattle, Avista Corp., et al., L.A. Dept of Water and Power, CA Electricity Oversight Board, Pinnacle West Capital Corp., et al., Sempra Energy Trading Co., Williams Power Co., CA ISO, Northern CA Transmission Agency, So.CA Edison, PacifiCorp, City of Santa Clara, et al., and the TransCanada Energy, Ltd., for leave to intvn are denied as unnecessary. The mtns of the People of the State of CA to intvn in No. 03-74252, 03-74527, 03-74531, 03-74547, 03-74548, 03-74550, 03-74582, 03-74590, 03-74592, 03-74604, 03-74629, 03-74631, 03-74647, 03-74653, 03-74654, 03-74655, 03-74730 and the PUC to intvn in nos. 03-74527, 03-74531, 03-74582, 03-74547, 03-74548, 03-74550, 03-74590, 03-74592, 03-74604, 03-74629, 03-74631, 03-74653, 03-74654, 03-74655 and 03-74730 are granted. The mtn of the People of the State of CA for leave to intvn in NO. 04-70564 is denied in view of the consolidation of no. 04-70564 and 04-70637. The mtn of Coral Power for leave to file a late mtn to intvn is granted. In view of the consolidation of nos. 03-74252, 03-74523, 03-74531, 03-74548, 03-74582, 03-74654, 03-74415, 03-74526, 03-74527, 03-74531, 03-74547, 03-74548, 03-74647, 03-74582, 03-74590, 03-74592, 03-74604, 03-74629, 03-74647, 03-74653, 03-74654, 03-74655 and 03-74730, the mtn of the following entities to intvn in other petitions challenging the same rmd proceedings are denied as unnecessary; Morgan Stanley, Tucson Electric Power Co., PG&E, El Paso Merchant Energy, Puget Sound Energy, Inc., Modesto Irrigation

District, et al., Constellation Power, City of Vernon and Powerex. If any petitioner wishes to additionally participate as an intvnr in any of the cases consolidated by this order, it may file a renewed mtn upon the lifting of the stay. The renewed mtn shall state with specificity why movant's interests will not be addressed by another pty. (cite) Any renewed mtn shall also state movant's agreement to: (1) limit the combined length of the opening and intrvnr brief to 14,000 words, and (2) waive the filing of the reply brief. The mtns of Tucson Electric, et al., for leave to intvn in nos. 03-74647, 04-70564 and 04-70637 and PG&E and Powerex to intvn in no. 04-70564 are granted. However, the arguments offered as intvnrs must be included in the petitioners' briefs. In view of the provisions of the March 12, 2004 order staying proceedings, the mtns of IdaCorp, Salt River Project, Constellation Power, State Water Contractors, Tucson Electric, Automated Power Exchange, Morgan Stanley, Energy Plus, El Paso Merchant, City of Seattle, Portland G.E., Modesto Irrigation District, Powerex, PPL Energy Plus, and Sacramento Municipal to vacate the schedule are denied as moot. Within 14 days from the date of this order, Powerex Corp. shall tender the remainder of the dkt fee. Failure to satisfy the fee requirement will result in the dismissal of no. 03-74547 w/o further ntc. [re-dktd by je to include consolidated cases] [01-71051 [*et al.*]] (je) [01-71051 [*et al.*]]

* * * * *

3/25/04 Filed order (Deputy Clerk: gss/promo): The court is in receipt of NRG Energy's bank-

ruptcy status report which states that NRG Energy has emerged from bankrupcy. On or before 4/23/04, NRG Energy shall file their answering brf, a ntc of joinder in another aples' brf pursuant to Ninth Cir.R. 28-4, or if aple NRG Energy does not elect to file a brf, aple NRG Energy shall notify the court by ltr on or before the due date of the ans brf pursuant to Ninth Cir.R. 31-2.3. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/31/04 Received Timothy B Taylor for NRG Energy Inc letter dated 3/29/04 re: NRG Energy will not be filing a brief. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

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5/12/04 Filed aples additional citations, served on 5/12/04 (panel) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

5/13/04 Filed order (Deputy Clerk: hh) The mtn of cross-defs Arizona Electric Power Cooperative, Inc. et al. to appear as cross-aplts is granted in part. Movants may appear as cross-aplts for the limited purpose of having their proffered brf filed. The brf accompanying Movant's motion is ordered filed. Aplts Reliant Energy, et al. may file a responsive brf by 5/28/04. (phone/fax) [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

6/14/04 ARGUED AND SUBMITTED TO Mary M. SCHROEDER, William C. CANBY, Richard C. TALLMAN [02-57200 [*et al.*]] (ea) [02-57200 [*et al.*]]

* * * * *

12/8/04 FILED OPINION: AFFIRMED IN PART; VACATED IN PART and REMANDED.

Costs are awarded to BPA, WAPA, and BC Hydro and against PowerEx. (Terminated on the Merits after Oral Hearing; Affirmed in part; Vacated in part and Remanded; Written, Signed, Published. Mary M. SCHROEDER, author; William C. CANBY; Richard C. TALLMAN. FILED AND ENTERED JUDGMENT. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

1/26/05 Filed order (Mary M. SCHROEDER): The mtn of x-aplt Powerex' mtn for an ext of time to file a petn for rhrg and sugg for rhrg en banc is granted. Aple/x-aplt is granted an ext of 7 days from the date of this order within which to file a petn for rhrg and sugg for rhrg en banc. [02-57200 [*et al.*]] (crw) [02-57200 [*et al.*]]

2/2/05 Filed original and 50 copies Appellee/cross aplt Powerex Corp petition for panel rehearing and petition for rehearing en banc 20 pages, served on 2/1/05 (panel and active judges) (ji) [02-57200 [*et al.*]]

* * * * *

3/3/05 Filed order (Mary M. SCHROEDER, William C. CANBY, Richard C. TALLMAN): . . . The petition for panel rehearing and the petition for rehearing en banc are denied. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/11/05 MANDATE ISSUED. Costs taxed against appellants Reliant and Duke for $3617.10. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

3/16/05 Filed aplc/x-aplt Powerex Corp motion to recall the mandate. served on 3/15/05 [panel] (ji) [02-57200 [*et al.*]]

* * * * *

3/25/05	Filed aples opposition to aple/x-aplt Powerex Corp to recall mdt. served on 3/25/05 PANEL [02-57200 [*et al.*]] (crw) [02-57200 [*et al.*]]
4/6/05	Filed order (Mary M. SCHROEDER): Aple/cross aplt, Powerex Corp.'s mtn to recall the mandate is denied. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]
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6/27/05	Received letter from the Supreme Court dated 6/22/05 re: granting further ext of time to file cert to 7/15/05. casefile. [02-57200 [*et al.*]] (crw) [02-57200 [*et al.*]]
7/22/05	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 5-85 filed on 7/15/05. [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]
1/26/07	Received letter from the Supreme Court dated 1/19/07 re: granting the mtn Government of Canada for leave to file a brf as amicus curiae; the petition for a writ of cert is granted lmt to question 1 presented by the petition and parties are directed to brf and argue the following question: Whether the court of appeal had jurisdiction to review the district court's remand order, notwithstanding 28 USC Sec. 1447(d). [02-57200 [*et al.*]] (ji) [02-57200 [*et al.*]]

* * * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

No. 02-CV-1001

RELIANT ENERGY SERVICES, INC., ET AL.,
Plaintiffs,

v.

ARIZONA ELECTRIC POWER COOPERATIVE, INC., ET AL.,
Defendants.

MINUTES OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

It is hereby ordered that all Judges in the United States District Court, Southern District of California hereby recuse from [*sic*] the above entitled case. Pursuant to 28 U.S.C. 292(B) Chief Judge of the Ninth Circuit, Mary M. Schroeder hereby designates the Honorable Judge Robert H. Whaley, United States District Court for the Eastern District of Washington to perform the duties of United States District Judge temporarily for the Southern District of California for the above designated case.

New Case #: 02cv1001-RHW(NLS).

Please forward judge's court file to new assigned judge.

Date: June 7, 2002 Deputy: Jamie Ponzio

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

No. 02-CV-990

RELIANT ENERGY SERVICES, INC.,
Plaintiff,

v.

ARIZONA ELECTRIC POWER COOPERATIVE, INC., ET AL.,
Defendants.

MINUTES OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

It is hereby ordered that all Judges in the United States District Court, Southern District of California hereby recuse themselves from the above entitled case. Pursuant to 28 U.S.C. 292(B) Chief Judge of the Ninth Circuit, Mary M. Schroeder hereby designates the Honorable Judge Robert H. Whaley, United States District Court for the Eastern District of Washington to perform the duties of United States District Judge temporarily for the Southern District of California for the above designated case.

New Case #: 02cv0990-RHW(LAB).

Please forward judge's court file to new assigned judge.

Date: June 12, 2002 Deputy: Jamie Ponzio

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

No. 02-CV-1000

DUKE ENERGY TRADING AND MARKETING LLC, ET AL.,
Plaintiffs,

v.

ARIZONA PUBLIC SERVICE COMPANY, ET AL.,
Defendants.

MINUTES OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

It is hereby ordered that all Judges in the United States District Court, Southern District of California hereby recuse themselves from the above entitled case. Pursuant to 28 U.S.C. 292(B) Chief Judge of the Ninth Circuit, Mary M. Schroeder hereby designates the Honorable Judge Robert H. Whaley, United States District Court for the Eastern District of Washington to perform the duties of United States District Judge temporarily for the Southern District of California for the above designated case.

New Case #: 02cv1000-RHW(JAH).

Please forward judge's court file to new assigned judge.

Date: June 12, 2002 Deputy: Jamie Ponzio

[Counsel name/address blocks omitted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding
Special Title (Rule 1550(b))

Nos. CV 02-0990-JM(LAB)
CV 02-1000-L(JAH)
CV 02-1001-B(POR)

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

This Document relates To:

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

Duke Energy Trading and Marketing, LLC, et al. v.
Arizona Public Service Company, et al.

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

DECLARATION OF BARRY HIMMELSTEIN IN SUPPORT OF MOTION TO REMAND AND MOTION TO STRIKE AND/OR SEVER CROSS-COMPLAINTS

I, BARRY HIMMELSTEIN, declare and state:

1. I am a partner in the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP, counsel for plaintiff Oscar's Photo Lab and Mary L. Davis in these coordinated actions. I have personal knowledge of the facts set forth herein, and could and would testify competently thereto if called upon to do so.

2. Attached hereto are true and correct copies of the following documents:

* * * * *

Exhibit 4	Printouts of the "What We Do" and "Facts and Figures" pages of Powerex's website, www.Powerex.com, and Page 30 of the 2001 BC Hydro Annual Report
Exhibit 5	Canadian Competition Bureau, News Release, Competition Bureau Closes Bid-Rigging Inquiry Involving Supply of Electricity in Alberta (Dec. 20, 2000)

* * * * *

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of July, 2002, at San Francisco, California.

/s/ BARRY R. HIMMELSTEIN

Barry R. Himmelstein

[Address block omitted]

EXHIBIT 4

[Webpage graphics omitted]

What We Do

Powerex is the wholly-owned power marketing subsidiary of BC Hydro, Canada's third largest electric utility. Established in 1988, Powerex has grown to be a leading marketer of wholesale energy products and services in western Canada and the western United States, and a growing niche player in other markets in North America.

Customers: Our customer base has increased dramatically over the years, and now includes more than 150 consumer and investor owned utilities, municipalities, power pools, large industrials and power marketers who have come to know Powerex as a customer focused, highly flexible, reliable provider of energy solutions.

Products and Services: We offer our customers a variety of products and services that can be tailored to meet their changing daily and seasonal energy needs. Products like energy and capacity, and services like energy exchanges, natural gas trading and more. We can provide power for days, weeks, months or longer, and our fully staffed real-time trading desk means we're open 24 hours a day, 7 days a week. A variety of financial alternatives enhances our customer offerings.

Resources: As a physical supplier of power, our portfolio of resources is second-to-none. We purchase power from a wide variety of energy providers in BC, western Canada and across the US; and are marketers, on behalf of the BC government, of the highly reliable Canadian Entitlement power from the Columbia River Treaty. Combine this with our access to the flexibility and robust nature of BC Hydro's hydroelectric system, and we offer superior value to our customers.

Marketplace Expertise: At Powerex we've developed a strong understanding of and expertise in the complexities

of marketplace rules and transmission systems that enables us to efficiently and economically move power between regions to where our customers need it. And we've got all the necessary licenses and permits, from both Canadian and US regulators, to allow us to do business now, and for years to come.

Commitment: Powerex is a team of industry professionals committed to working with our customers to make deals happen. We place high value on integrity and trust. We believe that when our customers win, we win. And we pride ourselves on our ability to build and nurture mutually beneficial relationships.

About BC Hydro

BC Hydro is a Crown Corporation of the province of British Columbia, and the third largest electric utility in Canada, serving more than 1.6 million BC customers and generating between 43,000 and 54,000 GWh of electricity annually.

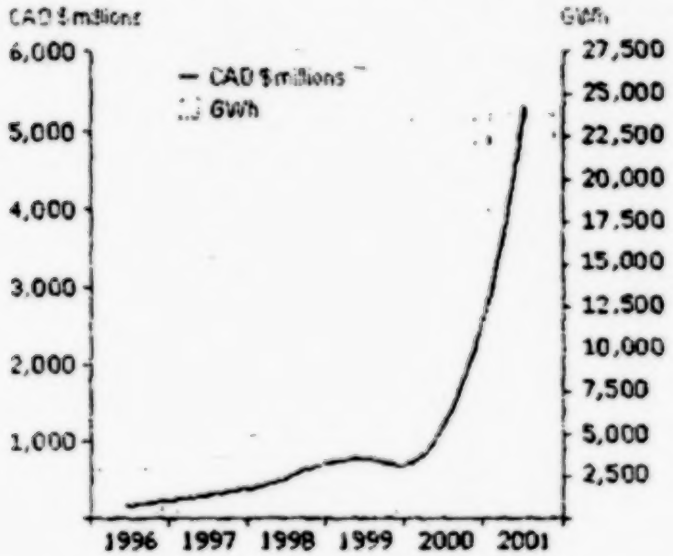
BC Hydro has constructed a world-class integrated hydroelectric system of close to 11,500 MW of generating capacity – over 10,000 of which are hydroelectric. Hydro's backbone electric system is interconnected with the western US by two 500 kV transmission lines on the west coast between BC and Washington, one 230 kV line connecting BC and Washington on the east side, and a 500 KV line to the east, connecting BC with Alberta.

Powerex's access to the flexibility of the BC Hydro system enables us to add value and shape power deliveries to customers across the western interconnected electric system.

[Webpage graphics omitted]

Quick Facts

- Established in 1988 as the wholly-owned power marketing and trading subsidiary of BC Hydro, Canada's 3rd largest electric utility.
- Located in Vancouver, British Columbia, on Canada's west coast.
- A leading marketer of wholesale energy products and services with approximately 150 customers in Western Canada and the United States. Customers include utilities, power pools, large industrials and power marketers.
- Increased revenues from CDN$51 million in 1995 to CDN$5.5 billion in 2000. For more detailed information please check out our Credit & Financials page.



- Over 130 employees in the areas of power marketing and trading, transmission management and scheduling, natural gas trading and gas transmission management, contracts, trade policy, credit and risk management, finance, accounting and IT.

- Offers a variety of energy products and services that can be tailored to meet individual customer needs. Products and services include: energy and capacity; 24-hour real-time service; seasonal energy exchanges; scheduling services; natural gas trading and more.
- Trades physical and financial products.
- Access to a portfolio of resources in Canada and the US including BC independent power producers (IPPs), utilities and marketers.
- Access to the flexibility and robust nature of the BC Hydro hydroelectric system.
- Responsible for marketing, on behalf of the BC government, the Canadian Entitlement power derived from the Downstream Benefits of the Columbia River Treaty. This highly reliable product currently amounts to 800 MW of capacity and increases to 1200 MW in 2003.
- Trades in the west via BC Hydro's interconnected electric system, comprised of two 500kv and one 230 kv line between BC and the US and one 500kv line between BC and Alberta.
- Holds all necessary trade permits including: export permits from the Canadian National Energy Board and the province of BC; export permits from the US Department of Energy; natural gas import and export permits from Canadian and US regulators.
- Received Power Marketing Authorization from the US Federal Energy Regulatory Commission (FERC) in 1997, enabling Powerex to buy and sell power anywhere in the US and to deliver power directly from BC to its US customers.

From page 30 of BC Hydro's 2001 Annual Report:

[Graphics omitted]

Powerex, BC Hydro's power marketing subsidiary, enjoyed a record-breaking year in fiscal 2001. In the first quarter alone, Powerex revenues broke the billion-dollar mark, nearly matching total revenues for the previous year. The company went on to increase revenues by over a billion dollars each quarter, ending the year with total sales of over $5 billion.

A COMBINED EFFORT

Powerex's success can be attributed to the experience, skills and market knowledge of Powerex staff, coupled with the ability of BC Hydro's Power Supply group to manage Hydro's electric generating system to maximize value. As well, unique market conditions in California resulted in an unusually high demand for power in the state and market-driven high prices for electricity.

WORKING IN PARTNERSHIP WITH CUSTOMERS

Powerex worked with three of BC Hydro's large industrial customers who wanted to take advantage of the strong market opportunities in 2000. In a one-time event, the customers agreed to shift the timing of their energy use during a high market demand period to a lower one. Powerex was then able to sell the resulting extra power on the spot market and the benefits were shared.

EXPANDING ITS PRESENCE

This year the company continued to expand its market east, signing enabling agreements with utilities and marketers across the U.S. Powerex is currently exploring setting up a small satellite office in Toronto to be ready for new business in the eastern regions when the Ontario marketplace opens up to wholesale competition. Staffing

levels have been increased across all areas to support Powerex's growth in trade and marketing activities. With a staff of clo to 120, the company has expanded its offices, building a larger trade floor at its downtown Vancouver location.

EXHIBIT 5

[Webpage graphics omitted]

Government of Canada

NEWS RELEASE

Competition Bureau Closes Bid-Rigging Inquiry Involving Supply of Electricity in Alberta

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OTTAWA, December 20, 2000 – The Competition Bureau announced today it has concluded that behaviour involving two importers of electricity into Alberta did not constitute bid-rigging under the *Competition Act*. Therefore, the Bureau has closed its inquiry.

In December of 1999, the Power Pool of Alberta, on the recommendation of the Market Surveillance Administrator, referred bidding behaviour that appeared to be consistent with criminal bid-rigging to the Bureau for further investigation under the *Competition Act*. The behaviour in question consisted of certain bids made by the British Columbia Power Exchange Corporation ("Powerex") and Enron Canada Corp. ("Enron") to supply power to the Power Pool of Alberta between June 1 and September 2, 1999.

"We took this complaint seriously. We conducted a thorough investigation, used formal search powers and seized records from both companies," said Johanne D'Auray, Deputy Commissioner of Competition, Criminal Matters. "The evidence suggests that the companies were employing independent business strategies and were not colluding on bids."

The Competition Bureau is an independent law enforcement agency whose mandate is to maintain and encourage fair competition in Canada.

For more information, please contact:

Cynthia Grant
Communication Advisor
Communications Directorate
(819) 994-0349

[Counsel name/address block omitted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding
Special Title (Rule 1550(b))

Nos. CV 02-0990-JM(LAB)
CV 02-1000-L(JAH)
CV 02-1001-B(POR)

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

This Document relates To:

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

Duke Energy Trading and Marketing, LLC, et al. v.
Arizona Public Service Company, et al.

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

DECLARATION OF KENNETH G. PETERSON

I, Kenneth G. Peterson, declare as follows:

1. I have personal knowledge of the facts contained in this Declaration, except for those matters stated on information and belief, as to which I believe them to be true. If called as a witness, I could and would competently testify to all of the facts stated herein.

2. I have held the position of President and Chief Executive Officer of Powerex Corporation ("Powerex") since December 1, 1994.

3. I am trained as a resource economist and hold a masters degree in economics. Prior to joining Powerex, I was employed for 14 years with the British Columbia Hydro and Power Authority ("BC Hydro"). During my career

at BC Hydro, I was responsible for various aspects of resource planning and, in that capacity, developed an intimate knowledge of BC Hydro's generating resources, the evolution of domestic demand for electricity within BC Hydro's service area in British Columbia, and the potential for the export of electricity to interconnected jurisdictions, particularly in the United States. I had personal responsibility for overseeing the preparation of both resource plans and demand forecasts during my tenure at BC Hydro. When I began my career at BC Hydro, the corporation was in the latter stages of a very significant expansion of its generating capacity through the construction of major hydroelectric facilities in British Columbia. My understanding of the genesis of that construction program and its subsequent evolution is set out in the following paragraphs.

4. In 1962, the Provincial Government passed the British Columbia Hydro and Power Authority Act to establish a vehicle in which to hold assets it had acquired and to promote major hydroelectric development involving the construction of significant storage dams and generating capacity on the Peace and Columbia River systems (the "Two River Policy"). The Act was subject to litigation and ultimately declared ultra vires by the British Columbia Supreme Court in 1963. In 1964 the Provincial Government passed another British Columbia Hydro and Power Authority Act, which created the Provincial Crown Corporation known today as BC Hydro.

5. Once created, BC Hydro implemented the Two River Policy. Specifically, it began planning for the development of the W.A.C. Bennett Dam to create the Williston Reservoir on the Peace River. The Dam was completed in 1967. Since 1968, BC Hydro has further developed the hydroelectric potential of the Peace River with the installation of the Peace Canyon Dam and other power-related facilities.

6. In connection with the Two River Policy and its development of the Columbia River system, BC Hydro

joined the Provincial Government and the Canadian Government in negotiations with the United States between 1962 and 1964 to develop a Protocol to the Columbia River Treaty ("Treaty").

7. The formal documents that comprise the arrangements between Canada and the United States with respect to the Treaty are compiled in a book issued by the Canadian Departments of External Affairs and Northern Affairs and National Resources and published by the Queen's Printer and Controller of Stationery in February 1964. In April 1964, the Department of External Affairs issued a further volume explaining additional aspects of the process that led to the finalization of the Treaty and the Protocol. My review of these documents, together with my involvement with the Treaty in the context of my responsibilities at BC Hydro and later at Powerex, has informed my understanding of these historical events.

8. Attached as Exhibit A hereto is a true copy of the following pages from the book described in Paragraph 8: 58-81 (Columbia River Treaty); 82-90 (the formal press release issued by the Prime Minister of Canada on January 17, 1961, immediately after signing the Treaty, explaining its origin and effect); 100-106 (Canada-British Columbia Agreement dated July 8, 1963); 107-109 (Canada-British Columbia Agreement dated January 13, 1964); 110-114 (exchange of Notes and Protocol regarding the Columbia River Treaty); 115-121 (exchange of Notes and Attachment Relating to Terms of Sale).

9. The Treaty required Canada to construct storage facilities in Canada to control the flow of the Columbia River in a way that would enable the United States to generate more power at its existing facilities on the Columbia River (the "Downstream Benefits"), and entitled Canada to receive half of the Downstream Benefits over the 60-year life of the Treaty (the "Canadian Entitlement"). In 1963, the British Columbia Provincial Government negotiated an agreement with Canada that provided for British Columbia to directly receive the Down-

stream Benefits. This Agreement is found at pages 100-106 of Exhibit A.

10. In 1964, the Province, Canada, and the United States agreed to a Protocol for the implementation of the Treaty. The Protocol is found at pages 110-114 of Exhibit A. In two separate documents, it was agreed that British Columbia would receive an upfront payment in place of the first 30 years of the Canadian Entitlement. These two documents are found at pages 107-109 and 115-121 of Exhibit A.

11. In October 1964 BC Hydro prepared a booklet that consolidated for convenient reference a number of documents relating to the Treaty. Attached as Exhibit B hereto is a true copy of the following pages from the book described in Paragraph 11: 1; 39-45 (Canadian Entitlement Purchase Agreement); 47 (Designation of Canadian Entity); and 49-54 (Exchange of Notes).

12. In September 1964, Canada designated BC Hydro as the Canadian Entity under the Treaty. This Designation is found at page 47 of Exhibit B.

13. BC Hydro played a key role, through its then Chairman Hugh Keenlyside, in the negotiations that produced these important international and interprovincial agreements. As a result, BC Hydro was responsible for construction of the reservoir facilities on the Columbia River to fulfill Canada's obligations under the Treaty and has been responsible ever since for the ongoing implementation and administration of the Treaty. The arrangements made for the initial disposal are found in the Canadian Entitlement Purchase Agreement (the "CEPA") between BC Hydro and Columbia Storage Power Exchange, a non-profit corporation organized under the laws of the State of Washington. Mr. Keenlyside signed this document on behalf of BC Hydro and it was approved by an Exchange of Notes dated September 16, 1964, between Canada and the United States. True copies of the CEPA and the Exchange of Notes are found at pages 39-45 and 49-54 of Exhibit B.

14. During the negotiations related to the Columbia River Treaty, BC Hydro continued its parallel development of the Peace River pursuant to the Two River Policy.

15. Construction of the facilities contemplated by the Two River Policy were completed in 1984 with the completion of the Revelstoke Dam on the Columbia River.

16. During the 1980s, BC Hydro was an active seller of power to the United States entities, primarily the Bonneville Power Administration ("Bonneville"), with such sales taking place at the international border.

17. In the late 1980's, the Provincial Government overhauled the legislation governing the energy sector in British Columbia. The Provincial Government created Powerex as an export agency for the purpose of marketing power to United States entities. The Provincial Government wished to ensure that BC Hydro's surplus power was marketed in a manner that maximized the benefits to all British Columbians. Additionally, the Provincial Government wished to promote the development of electricity produced by independent power producers for sales to the United States market.

18. In December 1988, BC Hydro – acting as the agent of the British Columbia Provincial Government under § 3(1) of the Hydro Act – incorporated Powerex under the Company Act of British Columbia as a wholly owned subsidiary of BC Hydro to serve the vital role of marketing the Province's surplus electric power. Powerex was originally incorporated as the British Columbia Power Export Corporation on December 13, 1988. The company changed its name to British Columbia Power Exchange Corporation on February 15, 1991, and then changed its name again to Powerex Corp. on September 6, 2000. True and correct copies of the Articles of Incorporation and Certificates changing the name of the company are attached hereto as Exhibit C.

19. Following its incorporation in 1988, Powerex assumed its responsibility for marketing surplus power from the BC Hydro system. BC Hydro delivered surplus elec-

tricity to Powerex at the British Columbia border and Powerex, in turn, sold it to entities from the United States and Alberta at wholesale. Powerex continues to perform this function within this structure to the present day.

20. Since its incorporation, Powerex has also been called upon to serve some specific policy objectives set for it by the Provincial Government. For instance, in the early 1990's the Provincial Government approved Powerex as the appropriate vehicle to create a power exchange operation ("PEO") in British Columbia. The Provincial Government desired to promote a domestic independent power production industry by creating an efficient market for the private power. The PEO was approved as operational as of September 1993. The PEO contemplated Powerex making an auction market for the trading of electricity. The objectives for Powerex were set out in a document prepared by Powerex entitled "Opportunities in the Short-Term Electricity Market," which formed the basis for a presentation to stakeholders in early 1991 as part of the application process associated with the approval of the PEO. True copies of the relevant portions of this document are attached hereto as Exhibit D.

21. The PEO was part of the means by which Powerex was to meet the objectives of the Province. The PEO remained in place for a number of years, but did not fulfill expectations because of lack of interest from the generating sector. The PEO is no longer operational.

22. Powerex was directly involved with the realization of Provincial objectives in connection with the Columbia River Treaty commencing early in the 1990s. It was at that time that the Province began the process of determining how to receive or dispose of the Canadian Entitlement under the Treaty once their contracts for the sale of the Downstream Benefits began to expire in 1998. Under the Treaty, the United States would be obliged to return the Canadian Entitlement to Canada unless a resale could be negotiated and approved by both countries.

23. Commencing in early 1990, BC Hydro began discussions with the U.S. Army Corps of Engineers and Bonneville (collectively the U.S. Entity under the Treaty) to define the Canadian Entitlement. Discussions became more focused commencing in 1993 as representatives of the Province, BC Hydro, Bonneville, and the U.S. Army Corps of Engineers began meetings to address the issue.

24. Early on, the potential for resale of the Canadian Entitlement in the United States became a prominent part of the discussions. Mr. Ken Epp, then President of Powerex, was an early member of the negotiating team, along with the Deputy Minister of Energy, Petroleum Mines and Mineral Resources. Upon the retirement of Mr. Epp, I became President and CEO of Powerex. I was also a member of the Province's negotiating team. I remained in both capacities through the completion of the negotiating process that resulted in arrangements with the United States for the return and/or resale of the Canadian Entitlement effective April 1, 1999. The negotiation process with respect to the Canadian Entitlement took approximately seven years. While the negotiating team on the Canadian side varied from time to time, I was a part of it throughout the process. The final arrangements approved by both countries include a significant role for Powerex.

25. Pursuant to an Entitlement Assignment Agreement, the Province assigned all of its rights, title, and interests in the Entitlement to Powerex so that it can realize the maximum benefits of the surplus power for British Columbians. While the precise amount of the Canadian Entitlement is determined pursuant to very complex calculations, it is a very significant resource. A true copy of the Entitlement Assignment Agreement is attached hereto as Exhibit E.

26. In 1997, the Province passed the Power for Jobs Act ("Jobs Act"). The Jobs Act contemplates diverting portions of BC Hydro's surplus power or the Canadian Entitlement, which would otherwise be sold by Powerex to ex-

ternal markets, to British Columbia industry for the purpose of job creation. Pursuant to the Jobs Act, the Provincial Government was empowered to instruct either BC Hydro or Powerex to supply power to British Columbia industry on terms defined by the Provincial Government.

27. On behalf of Powerex, I have been involved in numerous negotiations between the Provincial Government and industrial undertakings contemplating locating facilities in British Columbia for which the price of power is a significant factor in making a location decision. Powerex was contemplated to play an important role in connection with the supply of power in each case. While those efforts have been unsuccessful, pursuant to the Jobs Act and at the direction of the Provincial Government, Powerex has supplied power on favorable terms to facilitate the expansion of some existing businesses in British Columbia.

28. On March 30, 1984, the Provincial Government entered into an agreement with the City of Seattle, Washington ("Seattle"), related to the Skagit River Treaty (the "Skagit Agreement"). Under the Skagit Agreement, Seattle agreed not to raise the High Ross Dam, which would have had the effect of flooding substantial areas of British Columbia. As compensation for the loss of the power benefits that would have been derived from the High Ross Dam, British Columbia agreed to deliver certain quantities of electricity to Seattle until 2066. A true copy of the Skagit Agreement is attached hereto as Exhibit F.

29. On December 3, 1985, the Province assigned certain of the Province's benefits and obligations under the Skagit Agreement to BC Hydro. A true copy of this document is attached hereto as Exhibit G. As a result of a 1996 Bonneville rate case, lengthy negotiations commenced between the Province, Seattle, and Bonneville regarding the transmission arrangements relating to the power provider under the Skagit River Treaty. Powerex took the lead role (on behalf of the Province) in negotiating a resolution of the issues among the parties. Effective February 1, 1999, BC Hydro entered into the "Agreement

for the Transmission of Skagit River Treaty Power between British Columbia Hydro and Power Authority and the City of Seattle" (the "Skagit Transmission Agreement"). A true copy of the Skagit Transmission Agreement is attached hereto as Exhibit H. Powerex executed a replacement power agreement with Bonneville, also effective February 1, 1999, under which Seattle was able to call upon Bonneville to deliver power to Seattle for the account of Powerex in the event Powerex was unable to deliver the Skagit River Treaty power pursuant to the Skagit Agreement. Additionally, Seattle and Bonneville executed a Point-to-Point Transmission Service Agreement ("Skagit PTP Agreement") for the necessary transmission capacity for the provision of the Skagit Treaty power. BC Hydro assigned its rights and obligations, and delegated its operating responsibilities under the Skagit Transmission Agreement and the Skagit PTP Agreement to Powerex, to the extent permitted by such agreements. A true copy of the BC Hydro – Powerex Assignment Agreement is attached hereto as Exhibit I.

30. Columbia Power Corporation ("CPC") and CBT Power Corp. ("CBT") were established by Columbia Basin Trust, a corporation established by Columbia Basin Trust Act. CPC and CBT were responsible for upgrading the Brilliant generating facilities. CPC/CBT's upgrade was secured by a power purchase agreement with West Kootenay Power (now UtiliCorp Networks Canada, Inc). Powerex entered into a Backstop Agreement with CPC/CBT to facilitate the Provincial Government's desire that CPC/CBT develop the Brilliant Dam upgrade. Under the Backstop Agreement, Powerex agreed to purchase electricity produced at the Brilliant facilities in the event West Kootenay Power defaults on its purchase obligation due to insolvency. A true copy of the Backstop Agreement is attached hereto as Exhibit J.

31. Powerex performs its role as the exclusive exporter of BC Hydro's surplus under my direction. I report in the normal course to my Board of Directors, but, on a day-to-

day basis, my management team and I are solely responsible for determining the manner in which Powerex meets its mandate to maximize the value of its export activities. Over the course of the 1990s, it became apparent that Powerex could better achieve its objectives by expanding its activities into acquiring and reselling power generated by parties other than BC Hydro. Again, under my direction, Powerex has expanded considerably in this area and has become an active trader in wholesale markets throughout North America. This has occurred under my direction and it is my belief that it has assisted British Columbia in achieving its objective of obtaining maximum value for the surplus power generated from British Columbia to the benefit of British Columbia taxpayers and ratepayers.

32. BC Hydro's Board of Directors appoints Powerex's Board of Directors. A number of Powerex's current executives previously worked at BC Hydro.

33. Powerex does not pay Canadian federal and Provincial income tax.

34. BC Hydro is a Crown corporation, incorporated in 1964 pursuant to the British Columbia Hydro and Power Authority Act. BC Hydro is owned in its entirety by Her Majesty the Queen in Right of the Province of British Columbia, by which name the Province of British Columbia (the "Province") is formally known. Dividends from the operations of BC Hydro are payable only to the Province.

35. The Lieutenant Governor in Council (the Executive Council of the Province) appoints BC Hydro's Board of Directors. A true copy of Orders in Council Nos. 751/2001, dated August 9, 2001, and 847/2001, dated September 25, 2001, appointing BC Hydro's Board of Directors, are attached hereto as Exhibit K. To my knowledge, no subsequent Orders in Council have been passed amending, rescinding, or superseding the above-described Orders in Council. BC Hydro, as the sole shareholder of Powerex, is authorized to appoint Powerex's Board of Directors. It does so by issuing a resolution naming the Board mem-

bers. Outside members of Powerex's current Board of Directors were subject to concurrence by the Office of the Premier. A true copy of the Extract from the Minutes of a Meeting of the Board of Directors of British Columbia Hydro and Power Authority held on October 18, 2001, is attached hereto as Exhibit L.

36. All substantive powers of BC Hydro are subject to, and can only be exercised with, the approval of the Lieutenant Governor in Council or the Minister responsible for BC Hydro.

37. BC Hydro's corporate objective is to support the development of the Province of British Columbia through the efficient supply of electricity. On behalf of the Province, BC Hydro operates an electric utility involved in the generation, transmission, and distribution of electricity.

38. BC Hydro maintains authority over Powerex through various arrangements, including a Risk Management Committee that oversees the financial exposure to which Powerex is subject. The Risk Management Committee is required to make periodic reports to the Provincial Government's Ministry of Finance.

39. BC Hydro also acts as the treasury for Powerex and facilitates the issuance of letters of credit in support of Powerex's commercial arrangements.

40. BC Hydro's borrowings and other fiscal arrangements are provided through, and therefore are supported by, the Provincial Government. As a result, BC Hydro maintains a credit rating equal to that of the Province. Powerex's commercial arrangements, in turn, are frequently supported by a guarantee from BC Hydro, thus providing Powerex the benefit of both BC Hydro's credit rating as well as the implied backing of the Provincial Government.

41. BC Hydro sells all of its surplus electricity to Powerex, and all of those sales take place at the Provincial border. BC Hydro does not, and has not, sold power at points of delivery in the United States. BC Hydro has

never participated in the bidding process established by the CalPX and ISO.

42. Powerex maintains two rate schedules on file with FERC under which it sells power generated by BC Hydro at wholesale in United States interstate commerce pursuant to market-based rate authority granted by FERC on September 24, 1997.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed this 9th day of August 2002, at Belle Fourche, South Dakota.

/s/ Kenneth G. Peterson
KENNETH G. PETERSON

LIST OF EXHIBITS

* * * * *

E – Entitlement Assignment Agreement

F – Skagit Agreement

* * * * *

H – Skagit Transmission Agreement

I – BC Hydro-Powerex Assignment Agreement

* * * * *

EXHIBIT E

[Powerex logo]

March 28, 2001

DELIVERED

The Authorized Representative for the Province
Mr. Charles Kang
Deputy Minister
Ministry of Employment and Investment
PO Box 9327, Station Prov. Govt.
Victoria, BC V8W 9N3

Dear Sir:

Entitlement Assignment Agreement

We refer to the Entitlement Assignment Agreement effective the 1st day of April, 1999 among the Province, BC Hydro (as the Canadian Entity under the Columbia River Treaty) and Powerex ("Entitlement Assignment Agreement"). Capitalized terms in this Letter Agreement will have the meanings ascribed to them in the Entitlement Assignment Agreement.

As you know from discussions among our respective representatives, electricity market prices available for next summer are considered to be attractive, and might not be available in the spot market at the time. Powerex has proposed to the Province that it may want to consider locking in a portion of the Deemed Entitlement Amount at a fixed price for next summer to manage price risk, and the Province has agreed that this is a prudent approach.

Thus, in accordance with Section 6.4 of the Entitlement Assignment Agreement, this letter confirms the Province's and Powerex's agreement to lock in 50 MW of the Deemed Entitlement Amount, at the following Monthly Prices for

the following quantities of the Deemed Entitlement Amount:

July 2001	–	12,787 MW.h at $415.39 US per MW.h
August 2001	–	13,657 MW.h at $415.39 US per MW.h
September 2001	–	13,216 MW.h at $415.39 US per MW.h

In accordance with the Entitlement Assignment Agreement, these Deemed Entitlement Amounts are determined after deduction of losses (3.6%) provided for in the Entity Agreement. The foregoing Monthly Prices are based on the Province's and Powerex's assessment of forward prices being offered in the market at present, take into account a Selling Brokerage Fee, and reflect transmission costs from the Points of Border Delivery for which Powerex will be responsible.

Yours truly,

POWEREX CORP.

Per: /s/ KEN G. PETERSON
Ken G. Peterson, Authorized Representative

PROVINCE OF BRITISH COLUMBIA

Agreed to and confirmed this 4th day of April 2001

Per: /s/ CHARLES KANG
Charles Kang, Authorized Representative

And: /s/ CHRIS TRUMPY
Chris Trumpy, Deputy Minister of Finance and Corporate Resident

c: King Lum
Shelley Murphy
Rohan Soulsby

[Powerex logo]

March 2, 2001

DELIVERED

The Authorized Representative for the Province
Mr. Charles Kang
Deputy Minister
Ministry of Employment and Investment
PO Box 9327, Station Prov. Govt.
Victoria, BC V8W 9N3

Dear Sir:

Entitlement Assignment Agreement

We refer to the Entitlement Assignment Agreement effective the 1st day of April, 1999 among the Province, BC Hydro (as the Canadian Entity under the Columbia River Treaty) and Powerex ("Entitlement Assignment Agreement"). Capitalized terms in this Letter Agreement will have the meanings ascribed to them in the Entitlement Assignment Agreement.

As you know from discussions among our respective representatives, electricity market prices available for next summer are considered to be attractive, and might not be available in the spot market at the time. Powerex has proposed to the Province that it may want to consider locking in a portion of the Deemed Entitlement Amount at a fixed price for next summer to manage price risk, and the Province has agreed that this is a prudent approach.

Thus, in accordance with Section 6.4 of the Entitlement Assignment Agreement, this letter confirms the Province's and Powerex's agreement to lock in 50 MW of the Deemed Entitlement Amount, at the following Monthly Prices for the following quantities of the Deemed Entitlement Amount:

July 2001	–	12,787 MW.h at $350.64 US per MW.h
August 2001	–	13,657 MW.h at $350.64 US per MW.h
September 2001	–	13,216 MW.h at $350.64 US per MW.h

In accordance with the Entitlement Assignment Agreement, these Deemed Entitlement Amounts are determined after deduction of losses (3.6%) provided for in the Entity Agreement. The foregoing Monthly Prices are based on the Province's and Powerex's assessment of forward prices being offered in the market at present, take into account a Selling Brokerage Fee, and reflect transmission costs from the Points of Border Delivery for which Powerex will be responsible.

Yours truly,

POWEREX CORP.

Per: /s/ KEN G. PETERSON
Ken G. Peterson, Authorized Representative

PROVINCE OF BRITISH COLUMBIA

Agreed to and confirmed this 5th day of March 2001

Per: /s/ CHARLES KANG
Charles Kang, Authorized Representative

And: /s/ CHRIS TRUMPY
Chris Trumpy, Deputy Minister of Finance and Corporate Resident

c: King Lum
Shelley Murphy
Rohan Soulsby

[Powerex logo]

January 15, 2001

DELIVERED

Minister of Employment and Investment
Parliament Buildings
Room 124
PO Box 9046 Stn Prov Govt
Victoria, BC
V8W 9E2

and

British Columbia Hydro and Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5K3

Attention: Mr. Michael Costello

Dear Sirs:

Entitlement Assignment Agreement amendment

We refer to the Entitlement Assignment Agreement effective the 1st day of April, 1999 among the Province, B.C. Hydro, as the Canadian Entity, and Powerex ("Entitlement Assignment Agreement"). Capitalized terms in this Letter Agreement will have the meanings ascribed to them in the Entitlement Assignment Agreement.

As you know from discussions among our respective representatives, the DowJones Mid-Columbia firm index price, referred to in Appendix 1 of the Entitlement Assignment Agreement, has exceeded the Price Cap on numerous occasions over the past several months, and is expected to continue to do so during the remainder of this fiscal year.

The purpose of the Price Cap was to limit Powerex's risk exposure when: (a) unusually high market clearing prices are the result of a thinly traded market into which Powerex is not able to sell large volumes such as the Deemed Entitlement Amount, and (b) Powerex has sold portions of the Deemed Entitlement Amount forward and therefore is not able to realize the daily spot market price on the entire Deemed Entitlement Amount.

The price excursions this year have been sustained for many hours at a time, and Powerex was able in most circumstance [*sic*] to realize these prices with their electricity market sales. Thus the implementation of the Price Cap for much of this year would be inconsistent with the pricing principles outlined in Sections 6.1 and 6.2, i.e. that the Monthly Price reflect fair market value and the ATC Price reflect the market price of a monthly block of power.

Powerex proposed temporary elimination of the Price Cap for the Deemed Entitlement Amount in writing on June 14, 2000 and the Province agreed June 22, 2000, subject to formal agreement. Powerex and the Province further agreed at a July 14, 2000 meeting that the pricing methodology described in Appendix 1 of the Entitlement Assignment Agreement would continue to apply with the exception that the Price Cap would not apply to the Deemed Entitlement Amount for the balance of the fiscal year ending March 31, 2001, subject to Powerex proposing an alternative approach to limiting the price risk to Powerex.

Powerex and the Province have operated on the basis of these agreements since June, 2000. In addition, Powerex and the Province have operated on the basis that the Price Cap has not applied in determining the ATC Price during the same period. On December 11, 2000, Powerex proposed to set the Price Cap for the Monthly Price and ATC Price at US $1,000 in order to limit price risk where the DowJones Mid-Columbia firm index price is above $1,000 per MW.h but trading is thin at that price.

This Letter Agreement confirms the parties' agreement that for the period June 1, 2000 to March 31, 2001:

(a) the Monthly Price for the Deemed Entitlement Amount will be the monthly price determined in accordance with the pricing methodology in Appendix 1, except that the Price Cap for purposes of Section 2.1 of Appendix 1 will be deemed to be US $1,000, notwithstanding the definition of "Price Cap" in Section 2.3 of Appendix 1;

(b) the ATC Price for deemed purchases of the PFJ Block Amount will be determined in accordance with the pricing methodology in Appendix 1, except that the Price Cap for purposes of Section 2.2 of Appendix 1 will be deemed to be US $1,000, notwithstanding the definition of "Price Cap" in Section 2.3 of Appendix 1; and

(c) the authorized representatives may, at any time and from time to time, agree to a new Price Cap or method of determining the Price Cap. Any such agreement may be for any period from the date of this Letter Agreement until March 31, 2001.

The parties to the Entitlement Assignment Agreement recognize that due to potential future price volatility, it may be advisable to amend Appendix 1 to better deal with the Price Cap and the potential need for other adjustments to the pricing methodology. The parties therefore acknowledge that they have requested their authorized representatives to reconsider the Price Cap methodology and adjustment mechanisms in the Entitlement Assignment Agreement and to recommend amendments, if any are determined to be appropriate, to the Entitlement Assignment Agreement, any such amendments to be effective April 1, 2001.

In all other respects the Entitlement Assignment Agreement continues in full force and effect and unamended. If the foregoing accurately confirms the agreement reached

between us, could you kindly sign a counterpart of this Letter Agreement and return it to the attention of the writer.

Yours very truly,

POWEREX CORP.

Per: /s/ KEN G. PETERSON
Ken G. Peterson, President and CEO

Agreed to and confirmed this 15th day of January, 2001

PROVINCE OF BRITISH COLUMBIA

Per: /s/ TIM STEVENSON
The Honourable Tim Stevenson
Minister of Employment and Investment

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, in its capacity as the Canadian Entity under the Columbia River Treaty.

Per: /s/ J.G. REDFORD FOR MICHAEL COSTELLO
Michael Costello, President and CEO

[Powerex logo]

December 1, 2000

DELIVERED

The Authorized Representative for the Province:
Mr. Charles Kang
Deputy Minister
Ministry of Employment and Investment
PO Box 9327, Station Prov. Govt.
Victoria, BC V8W 9N3

Dear Sir:

Entitlement Assignment Agreement

We refer to the Entitlement Assignment Agreement effective the 1st day of April, 1999 among the Province, BC Hydro (as the Canadian Entity under the Columbia River Treaty) and Powerex ("Entitlement Assignment Agreement"). Capitalized terms in this Letter Agreement will have the meanings ascribed to them in the Entitlement Assignment Agreement. As you know from discussions among our respective representatives, electricity market prices available for next summer are considered to be attractive, and might not be available in the spot market at the time. Powerex has proposed to the Province that it may want to consider locking in a small portion of the Deemed Entitlement Amount, 100 MW, at a fixed price for next summer to manage price risk, and the Province has agreed that this is a prudent approach.

Thus, in accordance with Section 6.4 of the Entitlement Assignment Agreement, this letter confirms the Province's and Powerex's agreement to the following Monthly Prices for the following quantities of the Deemed Entitlement Amount:

July 2001	–	25,573 MW.h at $185.89 US per MW.h
August 2001	–	27,314 MW.h at $185.89 US per MW.h
September 2001	–	26,433 MW.h at $185.89 US per MW.h

In accordance with the Entitlement Assignment Agreement, these Deemed Entitlement Amounts are determined after deduction of losses (3.6%) provided for in the Entity Agreement. The foregoing Monthly Prices are based on the Province's and Powerex's assessment of forward prices being offered in the market at present, take intc account a Selling Brokerage Fee and reflect that transmission costs from the Points of Border Delivery are for the account of Powerex.

Yours truly,

POWEREX CORP.

Per: /s/ KEN G. PETERSON
Ken G. Peterson, Authorized Representative

Agreed to and confirmed this 1st day of Dec. 2000

PROVINCE OF BRITISH COLUMBIA

Per: /s/ CHARLES KANG
Charles Kang, Authorized Representative

c: King Lum
Shelley Murphy
Rohan Soulsby

[Powerex logo]

December 1, 2000

The Honourable Tim Stevenson
Minister of Employment & Investment
P. O. Box 9327, St. Prov. Gov't.
Victoria, BC
V8W 9N3

Mr. Michael Costello
President and Chief Executive Officer
BC Hydro
18th Floor, 333 Dunsmuir Street
Vancouver, BC V6B 5R3

Dear Minister Stevenson and Mr. Costello:

Under Section 16.2 of the Entitlement Assignment Agreement and under Section 14.1 of the Electricity Purchase Agreement, the parties to the Agreements are required to appoint an Authorized Representative.

Under Section 13.2 of the Entitlement Assignment Agreement, the parties to the Agreement are required to appoint a representative for the Implementation Committee.

Under Section 16.4 of the Entitlement Assignment Agreement and under Section 14.3 of the Electricity Purchase Agreement, the parties to the Agreements are required to designate a representative for receiving notices under the Agreements.

This letter is to inform you of the following appointments and designations.

The Authorized Representative for Powerex for both of the Agreements will be:

Mr. Ken Peterson
President & CEO
Powerex
1400 - 666 Burrard Street
Vancouver, BC V6C 2X8

Telephone: (604) 891-5035
Facsimile: (604) 891-5015

Provided that for the period December 6, 2000 to January 12, 2001 the Authorized Representative for Powerex will be:

Doug Little
Vice President Trade Policy & Development
Powerex
1400 - 666 Burrard Street
Vancouver, BC V6C 2X8

Telephone: (604) 891-5063
Facsimile: (604) 891-5015

The representative on the Implementation Committee for Powerex will be:

Mr. Murray Margolis
Head Trader
Powerex
1400 - 666 Burrard Street
Vancouver, BC V6C 2X8

Telephone: (604) 891-5022
Facsimile: (604) 891-5045

The designate for receiving notices for both Agreements for Powerex will be:

Mr. King Lum
Director, Contracts
Powerex
1400 - 666 Burrard Street
Vancouver, BC V6C 2X8

Telephone: (604) 891-5062
Facsimile: (604) 891-5015

Yours truly,

/s/ KEN PETERSON

Ken Peterson
President & Chief Executive Officer
Powerex Corp.

Copies to:

For the Province:

Ms. Shelley Murphy
Senior Advisor, Electricity Development Branch
Ministry of Employment and Investment
PO Box 9327, Stn Prov Govt
Victoria, BC V8W 9N3

For BC Hydro:

Mr. Rohan D. Soulsby
Manager
BC Hydro
Business Development
Power Supply
6911 Southpoint Drive, 15th Floor
Burnaby, BC V3N 4X8

For Powerex:

Mr. King Lum
Director, Contracts
Powerex
1400 - 666 Burrard Street
Vancouver, BC V6C 2X8

C: Mr. Murray Margolis
Mr. Doug Little

THIS ENTITLEMENT ASSIGNMENT AGREEMENT is effective the 1st day of April, 1999 (the "Effective Date"),

BETWEEN:

PROVINCE OF BRITISH COLUMBIA, as represented by the Minister of Employment and Investment,

(the "Province")

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, in its capacity as a Canadian Entity under the Treaty;

(the "Canadian Entity")

AND:

BRITISH COLUMBIA POWER EXCHANGE CORPORATION, a British Columbia company having its principal office at 1400 - 666 Burrard Street, Vancouver, British Columbia V6C 2X8

("Powerex")

WHEREAS:

A. Canada and the United States of America are parties to the "Treaty between Canada and the United States of America relating to the Cooperative Development of the Water Resources of the Columbia River Basin" including its Annexes A and B, signed at Washington, District of Columbia, United States of America on the 17th day of January, 1961, and the Protocol, brought into force by exchange of instruments of ratification and an exchange of notes on September 16, 1964 (the "Treaty"); and

B. Pursuant to Article V(2) of the Treaty, the United States is obligated to deliver to Canada the Canadian Entitlement at a point on the Canada – United States boundary near Oliver, British Columbia, or at such other place as the entities (designated under the Treaty) may

agree upon, and the Canadian Entity and the U.S. Entity have entered into the Entity Agreement for that purpose; and

C. Pursuant to Article VIII(1) of the Treaty, portions of the Canadian Entitlement may be disposed of within the United States with the authorization of Canada and the United States evidenced by an exchange of notes; and

D. Under the terms of the Canada-British Columbia Agreement all proprietary rights, title, and interests in the Canadian Entitlement accruing to Canada belong to the Province; and

E. By an exchange of notes effective March 31, 1999 (the "1999 Exchange of Notes") Canada and the United States have authorized disposals of all or portions of the Canadian Entitlement within the United States with delivery and other arrangements for such disposals to be made in accordance with the Disposal Agreement; and

F. Pursuant to the Disposal Agreement, the Province may exercise certain rights with respect to delivery of portions of the Canadian Entitlement at Points of Entitlement Delivery (as defined in the Disposal Agreement); and

G. The Province wishes to assign all of its proprietary rights, title and interests in the Canadian Entitlement and under the Disposal Agreement to Powerex on the terms and conditions contained in this Agreement.

NOW THEREFORE the parties agree as follows:

1. DEFINITIONS

1.1. For purposes of this Agreement:

(a) "ATC Price" or "Around the Clock Price" means for any Month the price per MW.h for that Month, determined in accordance with the Purchases Pricing Principle and this Agreement, and as at the Effective Date means the price determined in accordance

with the pricing methodology established in Appendix 1;

(b) "B.C. Hydro" means British Columbia Hydro and Power Authority, not acting in its role as Canadian Entity under the Treaty;

(c) "Buying Brokerage Fee" means an amount equal to a typical arms-length third party broker's fee paid by a buyer for brokering purchases of monthly blocks of power in the western interconnection where the broker does not take title to the power;

(d) "Canada-British Columbia Agreement" means the agreement between Canada and the Province dated July 8, 1963, as amended, providing for assignment of certain rights and obligations under the Treaty from Canada to the Province;

(e) "Canadian Entitlement" means at any time the downstream power benefits to which Canada is entitled at that time as described in Articles V(1) and VII of the Treaty and determined in accordance with the Treaty;

(f) "Canadian Entitlement Rights" means the rights to the Canadian Entitlement, the rights under the Disposal Agreement and all associated rights granted or assigned pursuant to this Agreement;

(g) "Deemed Entitlement Amount" means for any Month the amount of Canadian Entitlement determined in accordance with the Treaty and the Entity Agreement that Powerex would be entitled to receive at the Points of Border Delivery during that Month assuming no disposals within the United States (including disposals by way of reduction of the U.S. obligation pursuant to the Disposal Agreement), af-

ter deduction of losses provided for in the Entity Agreement;

(h) "deliver" means make available in the case of electrical capacity or deliver in the case of electrical energy, or both, as the context may require and derivatives of "deliver" have corresponding meanings;

(i) "Disposal Agreement" means the Agreement on Disposals of the Canadian Entitlement within the United States for April 1, 1998 through September 15, 2024, entered into between Bonneville Power Administration (acting on behalf of the U.S. Entity under the Treaty) and the Province (acting as a Canadian entity under the Treaty) on March 29, 1999;

(j) "Electricity Purchase Agreement" means the agreement, providing for supply of power by Powerex to B.C. Hydro to be entered into between the Province, Powerex and B.C. Hydro concurrently with the parties entering into this Agreement;

(k) "Entitlement Pricing Principle" means the pricing principle established by Section 6.1;

(l) "Entity Agreement" means the "Columbia River Treaty Entity Agreement on aspects of the delivery of the Canadian Entitlement for April 1, 1998 through September 15, 2024" entered into between the Canadian Entity and the U.S. Entity, dated March 29, 1999;

(m) "Month" means a calendar month;

(n) "Monthly Price" means for any Month the price per MW or, per MW.h for Canadian Entitlement determined in accordance with the Entitlement Pricing Principle and this

Agreement, and as at the Effective Date means the price determined in accordance with the pricing methodology established in Appendix 1;

(o) "Net Entitlement Revenue" means the net amounts credited or charged to the Settlement Account each Month, as described in Section 5.1;

(p) "PFJ Block Amount" means for any period the total amount of energy in MW's to be delivered flat over all hours during that period by Powerex to B.C. Hydro pursuant to the Electricity Purchase Agreement;

(q) "Points of Border Delivery" means the Points of Delivery for Canadian Entitlement at the Canada-United States boundary as defined in the Entity Agreement;

(r) "Prime Rate" means the annual rate of interest published by Powerex's principal banker from time to time as its prime rate;

(s) "Purchases Pricing Principle" means the pricing principle established by Section 6.2;

(t) "Selling Brokerage Fee" means an amount equal to a typical arms-length third party broker's fee paid by a seller for brokering sales of monthly blocks of power in the western interconnection where the broker does not take title to the power;

(u) "Settlement Account" means the account to be maintained in the books and records of Powerex to which Net Entitlement Revenue is credited or charged; and

(v) "Transmission Cost" means Transmission Cost as defined in the Entity Agreement.

1.2. **Interpretation**

Unless otherwise specified, all references to Sections and Appendices are to those set forth in this Agreement. Reference to any party includes any permitted successor or assignee. The term "including" followed by descriptive words is used in this Agreement by way of example only and is not intended to limit the scope of the provision. The headings used in this Agreement are for convenience and reference purposes only.

2. ASSIGNMENT OF CANADIAN ENTITLEMENT AND AGREEMENT RIGHTS

2.1. **Rights to Canadian Entitlement**

The Province hereby sells, assigns and transfers to Powerex all of the Province's proprietary rights, title and interest in the Canadian Entitlement.

2.2. **Rights under Disposal Agreement**

The Province hereby sells, assigns and transfers to Powerex all its right, title and interest in and to the Disposal Agreement, as permitted pursuant to Section 7.7 of the Disposal Agreement, and Powerex hereby assumes all of the obligations of the Province under the Disposal Agreement. At the request and cost of Powerex, the Province agrees to take any actions and exercise any rights under the Disposal Agreement that must be exercised by the Province.

2.3. **Rights under Future Agreements**

At the request of Powerex, the Province will use reasonable efforts to negotiate other agreements with the U.S. Entity or Bonneville Power Administration relating to the Canadian Entitlement, including an agreement providing for exchanges of Canadian Entitlement for power in certain circumstances. Upon any such agreements being com-

pleted to the satisfaction of Powerex, the Province will, subject to appropriate approvals being obtained, assign to Powerex all its right, title and interest in and to any such agreement and Powerex will assume all of the obligations of the Province under any such agreement. At the request and cost of Powerex, the Province agrees to take any actions and exercise any rights under any such agreement that must be exercised by the Province.

2.4. **Province to Give Notice of Assignments**

The Province will forthwith notify the other parties to the Disposal Agreement and any agreement referred to in Section 2.3 of the assignments made in this Section 2.

3. **TERM OF ASSIGNMENT**

3.1. **Term**

Notwithstanding the actual date of execution of this Agreement, the term of this Agreement and the assignments under it will be from the Effective Date until September 15, 2024.

4. **POWER FOR JOBS**

4.1. **PFJ Allocated Amount**

From time to time the Province may by written notice to Powerex, accompanied by Orders-in-Council pursuant to the Power for Jobs Development Act (British Columbia), specify an amount of capacity and associated energy that will be allocated to its Power for Jobs initiative.

4.2. **Powerex to Enter into Electricity Purchase Agreement**

Concurrently with the execution of this Agreement, Powerex and the Province will enter into the Electricity Purchase Agreement with B.C. Hydro

under which Powerex agrees to supply the PFJ Block Amount to B.C. Hydro.

5. PAYMENT FOR CANADIAN ENTITLEMENT RIGHTS ASSIGNED

5.1 Net Entitlement Revenue

Each Month Powerex will credit (or charge in the case of a negative amount) to the Settlement Account for the assignment of the Canadian Entitlement Rights an amount in respect of the previous Month equal to:

(a) the Deemed Entitlement Amount for that Month, less any amount that is subject to agreed pricing pursuant to Section 6.4, multiplied by the Monthly Price; plus

(b) any amount that is subject to agreed pricing pursuant to Section 6.4, multiplied by the agreed price for that amount; minus

(c) Transmission Cost, if agreed to pursuant to Section 6.6; minus

(d) the PFJ Block Amount for the Month, multiplied by the ATC Price; plus

(e) the aggregate amount actually received that Month from B.C. Hydro, including interest received on overdue amounts, as payment for the PFJ Block Amount delivered by Powerex to B.C. Hydro (during any previous Month) pursuant to Section 6.1 of the Electricity Purchase Agreement.

Amounts credited or charged to the Settlement Account will be paid in accordance with Sections 7.4 and 7.5.

5.2. Powerex to Provide Information

Powerex will provide to the Province monthly at the time amounts are credited or charged to the

Settlement Account pursuant to Section 5.1 sufficient information to enable the Province to verify the amount credited or charged to the Settlement Account and to otherwise verify that the Pricing Principles and the terms and conditions of this Agreement are being met.

6. PRICING PRINCIPLES

6.1. Entitlement Pricing Principle

The Province and Powerex declare that the price provisions of this Agreement are intended to establish as the "Monthly Price" at any time a sale price for the following Month that reflects the fair market value of Canadian Entitlement delivered at the British Columbia-United States border during that Month. For purposes of this Section 6.1, "fair market value" at any time means the fair market value, less the Selling Brokerage Fee, determined prospectively (or by a methodology which is determined prospectively) of a monthly quantity of power having the attributes of the Canadian Entitlement at that time, including:

(a) the amount of capacity and energy comprised in the Canadian Entitlement for the Month;

(b) the requirements for scheduling Canadian Entitlement;

(c) the firmness of Canadian Entitlement and the remedies for failure to deliver;

(d) the nature of the transmission rights, including any limitations, required to deliver Canadian Entitlement; and

(e) any limitations on the ability of the Canadian Entity to receive Canadian Entitlement capacity and/or energy at the Nelway and Waneta Points of Border Delivery.

6.2. **Purchases Pricing Principle**

The Province and Powerex declare that the price provisions of this Agreement are intended to establish as the "ATC Price" at any time a purchase price for the following Month of power delivered at the British Columbia-United States border during that Month. For purposes of this Section 6.2, "purchase price" for a Month means the market price, plus the Buying Brokerage Fee, determined prospectively (or by a methodology which is determined prospectively) for a monthly block of power having the attributes of the PFJ Block Amount for that Month, including:

(a) 100% load factor deliveries; and

(b) firmness and remedies for failure to deliver as specified in the Electricity Purchase Agreement.

6.3. **Pricing Methodology**

The initial pricing methodology for determining the Monthly Price and the ATC Price as of the Effective Date is established in Appendix 1. The Province and Powerex acknowledge that from time to time during the term of this Agreement different methods of determining the Monthly Price or the ATC Price may be appropriate to meet the Entitlement Pricing Principle or the Purchases Pricing Principle, as the case may be. No sooner than 12 Months after the Effective Date or 12 Months since the pricing methodology was last established (or at any other time by agreement of the parties), if a party believes that the then current pricing methodology (including any values established under it) will produce a price that will not meet the relevant pricing principle during the next 12 Months, the party may, by notice to the other party, seek to renegotiate the then current pricing methodology.

The parties will negotiate in good faith to establish, within 90 days of such notice, a new pricing methodology to replace the then current methodology. If the parties are unable to negotiate a new pricing methodology within such time, either party may submit the matter to dispute resolution pursuant to Section 12. Upon agreement or determination of the new pricing methodology by dispute resolution, the new pricing methodology will become effective at the beginning of the Month immediately following the 90th day after the initial notice and the parties will adjust amounts paid from that date. In no event will the parties adjust the amounts paid or payable for any period prior to the effective date of the new pricing methodology.

6.4. **Agreements on Monthly Price**

Notwithstanding any other provision of this Agreement relating to price, the Province and Powerex may from time to time agree in writing that the Monthly Price for any specified part of the Deemed Entitlement Amount will be a price, or will be determined by a pricing methodology, specifically agreed for that part of the Deemed Entitlement Amount. Such agreement may relate to any future Month or Months.

6.5. **Agreements on ATC Price**

Notwithstanding any other provision of this Agreement relating to price, the Province and Powerex may from time to time agree in writing that the ATC Price for any specified future period will be a price, or will be determined by a pricing methodology, specifically agreed for that period.

6.6. **Agreements on Transmission Cost**

The Province and Powerex may from time to time agree in writing that some or all of the Transmission Cost that exceeds the Annual U.S. Obligation

(as defined in the Entity Agreement) will be included in the determination of Net Entitlement Revenue and therefore Charged to the Settlement Account. Such agreement may relate to any future period.

6.7. **Amended Pricing Methodology to become Appendix**

Any new or amended pricing methodology for the Monthly Price or the ATC Price established from time to time pursuant to Section 6.3 will be dated and signed by the parties and attached to this Agreement as Appendix 1. Such Appendix will replace and supersede the pricing methodology stated in it to be replaced and superseded.

7. **SETTLEMENT ACCOUNT**

7.1. **Establishment of Settlement Account**

Powerex will establish an account in its books and records to which Net Entitlement Revenue from the Effective Date will be credited (or charged if negative).

7.2. **Interest on Settlement Account Balance**

The Province will pay Powerex interest on any negative balance in the Settlement Account as at the end of each Month. Interest will accrue at the Prime Rate and will be payable monthly by deduction from future positive balances in the Settlement Account. Powerex will pay the Province interest at the Prime Rate on positive balances to the extent such positive balances are not paid when required under this Agreement.

7.3. **Conversion to Canadian Dollars**

Amounts will be credited or charged to the Settlement Account as Net Entitlement Revenue in the currency of the applicable obligation. As at the last banking day of each Month, the U.S. dollar

amount of any positive balance in the Settlement Account will be converted into Canadian dollars at the Toronto noon rate posted by Powerex's principal banker.

7.4. **Payment of Positive Balance**

Powerex will pay to the Province monthly by the last working day of each Month the positive balance, if any, in the Settlement Account as at the end of the previous Month, after conversion to Canadian dollars as provided for in Section 7.3 and after deducting any interest payable pursuant to Section 7.2.

7.5. **Payment of Negative Balance**

If at any time there is a negative balance in the Settlement Account, the negative balance will represent a debt owing by the Province to Powerex. Net Entitlement Revenue credited to the Settlement Account in any future Month will be applied first to eliminate any negative balance in the Settlement Account. If at any time there has been a negative balance for more than 3 consecutive months or the negative balance is more than $10,000,000, then the Province will, forthwith pay the entire amount of the negative balance to Powerex. If it appears at any time that there will be future negative balances in the Settlement Account, the Province and Powerex will negotiate in good faith ways to reduce or eliminate future negative balances, including establishing reserves.

8. **RELATING TO THE CANADIAN ENTITY**

8.1. **Directions from Powerex**

The Canadian Entity will, consistent with its duties as Canadian Entity under the Treaty and applicable laws, comply with the directions of Powerex from time to time with respect to all matters

pertaining to the delivery of the Canadian Entitlement pursuant to the Entity Agreement; provided that Powerex will reimburse the Canadian Entity for any costs that exceed costs the Canadian Entity would in any event incur in connection with scheduling Canadian Entitlement and otherwise to perform as the Canadian Entity under the Treaty. The Canadian Entity will, at the cost and request of Powerex, take actions required to enforce the rights of the Canadian Entity under the Entity Agreement that relate to the ownership and value of the Canadian Entitlement.

8.2. **Scheduling**

The Canadian Entity will schedule deliveries of the Canadian Entitlement energy at the Points of Border Delivery as requested by Powerex or the Canadian Entity may authorize Powerex to directly schedule such deliveries. If the Canadian Entity elects to provide or accept energy in lieu of a mid-week flow change pursuant to paragraph 7 of the Canadian Entitlement Scheduling Guidelines (attached to and forming part of the Entity Agreement), Powerex will provide or accept the energy and be entitled to any return of energy and be liable for any cost for Powerex's own account.

8.3. **Timely Directions**

The Canadian Entity will request from Powerex and Powerex will in a timely way provide necessary directions to the Canadian Entity in order that the Canadian Entity may request information, provide notices and take actions required under the Entity Agreement within the time limited by that Agreement.

8.4. **Powerex to Consult**

Powerex will consult with the Canadian Entity with respect to the impact Powerex's marketing ac-

tivities may have on the Canadian Entity's operations under the Treaty. Powerex will not take actions or direct the Canadian Entity to take actions that, in the reasonable determination of the Canadian Entity, would violate any of the Canadian Entity's obligations under the Treaty or at law.

9. CANADA-BRITISH COLUMBIA AGREEMENT

9.1. Province to Consult with Powerex and Canadian Entity

The Province will:

(a) consult with Powerex and the Canadian Entity before concurring in any of the matters referred to in the Canada-British Columbia Agreement, where the matter concurred in would affect Powerex's rights in respect of the Canadian Entitlement;

(b) consult with Powerex and the Canadian Entity before making any request to Canada pursuant to the Canada-British Columbia Agreement, where the agreement sought would affect Powerex's rights in respect of the Canadian Entitlement;

(c) include Powerex and the Canadian Entity in any consultations between Canada and the Province pursuant to Section 7(1) or 7(3) of the Canada-British Columbia Agreement;

(d) request Canada to present a claim arising under the Treaty which Powerex wishes made against the United States pursuant to Section 7(2) of the Canada-British Columbia Agreement, to the extent that the claim relates to the Canadian Entitlement or Powerex's rights in respect of the Canadian

Entitlement and the Province deems the claim to be reasonable.

9.2. **No Representation as to Amount of Canadian Entitlement**

The Province makes no representation to Powerex as to the amount of capacity or energy comprising the Canadian Entitlement at any time.

10. **PROVISIONS FOR NON-DELIVERY OF CANADIAN ENTITLEMENT**

10.1. **Failure to Deliver Canadian Entitlement**

If the United States does not deliver (or is not deemed to have delivered) all or any portion of the Canadian Entitlement it is obligated to deliver during any Month, the Deemed Entitlement Amount for that Month will be reduced by the amount not delivered. Any undelivered amount which is delivered during any subsequent Month will be added to the Deemed Entitlement Amount for that subsequent Month. Any cash compensation received from the United States under the Treaty with respect to the Canadian Entitlement will be credited to the Settlement Account.

11. **LIABILITY FOR COSTS**

11.1. **Powerex Responsible**

Subject to Section 11.2, Powerex will be responsible for and will pay or reimburse the Province and the Canadian Entity for payment of any costs that the Province or the Canadian Entity may incur by reason of Powerex's election to receive Canadian Entitlement power within the United States pursuant to the Disposal Agreement and, without limitation, for any Transmission Cost that exceeds the Annual U.S. Obligation (as defined in the Entity Agreement) as provided for in the Entity Agreement; provided the Canadian Entity will not

agree to pay such amounts under the Entity Agreement or otherwise take actions that would incur such costs, unless directed to do so by Powerex.

11.2. **Saving**

If Powerex obtains written agreement of the Province with respect to payment of all or any portion of the Transmission Cost pursuant to Section 6.6, such cost will be for the account of the Province and will be included in the determination of Net Entitlement Revenue pursuant to Section 6.6.

12. DISPUTE RESOLUTION

12.1. **Disputes**

Any Dispute under this Agreement will be resolved by dispute resolution pursuant to this Section 12. For purposes of this Section 12, "Dispute" means any dispute that arises under or in connection with this Agreement and includes any failure to agree upon the Monthly Price or the ATC Price or any values that go into determining such prices.

12.2. **Senior Executives to Assist Dispute Resolution**

The parties will use reasonable efforts to settle all Disputes. In the event any such Dispute is not settled within 30 days after the date such Dispute arises, each party will within 10 days refer the matter in dispute to its Chief Executive Officer or in the case of the Province to the Deputy Minister of the Ministry of Employment and Investment or such other Deputy Minister as may be designated (the "Senior Executives"). The Senior Executives will meet within 21 days to attempt to negotiate a resolution of the Dispute. Settlement offers will not be admissible in any subsequent dispute resolution process.

12.3. **Parties may Commence Arbitration**

If the parties have not succeeded in negotiating a resolution of the Dispute within 30 days after the first meeting of the Senior Executives or if the Senior Executives do not meet within 21 days pursuant to Section 12.2, the parties will be deemed to be at an impasse and any party may commence arbitration procedures in accordance with this Section 12.

12.4. **Rules for Arbitration**

Any arbitration will proceed in accordance with the Domestic Arbitration Rules of Procedure of the British Columbia International Commercial Arbitration Centre, as they may be in force at the time of the arbitration. Unless the parties otherwise agree, any arbitration commenced in accordance with this Section 12 will be by single arbitrator.

12.5. **Arbitrator may Determine Pricing Methodology**

The parties expressly declare that the arbitrator will have the express authority to determine the pricing methodology from time to time that in the opinion of the arbitrator meets the pricing principles in Sections 6.1 and 6.2.

12.6. **Exclusive means of Resolving Disputes**

The parties declare that arbitration pursuant to this Section 12 will be the exclusive means of resolving any Dispute. The determination of the arbitrator will be final and binding.

13. **IMPLEMENTATION COMMITTEE**

13.1. **Implementation Committee to be established**

The parties will establish an implementation committee (the "Implementation Committee") for

purposes of considering issues that arise out of the performance of this Agreement.

13.2. **Meetings of the Implementation Committee**

Each party will be entitled to appoint one member of the Implementation Committee. The Implementation Committee will meet from time to time at the request of any member and in any event will meet at least once annually.

13.3. **Role of the Implementation Committee**

The Implementation Committee will consider changes in circumstances and whether such changes would, in the opinion of the Implementation Committee, warrant changes to this Agreement. The Implementation Committee's role will be advisory only and the Implementation Committee will have no authority to amend this Agreement or otherwise legally bind the parties.

14. **NO PARTNERSHIP OR AGENCY**

14.1. **No Partnership**

Nothing in this Agreement will be construed as establishing a partnership, joint venture or agency relationship among the parties or any of them. Each party will act on its own behalf and for its own benefit. No party will hold itself out as being the partner or agent of the other party under this Agreement. In particular, Powerex will not be or be construed as the agent of the Province and will be entitled to deal with the Canadian Entitlement Rights assigned to it under this Agreement as it sees fit without consultation with the Province. Any profits or losses with respect to sales of the Canadian Entitlement will be solely for the account of Powerex.

15. TERMINATION

15.1. By the Province

The Province will be entitled to terminate this Agreement and the assignments under it upon notice in writing to Powerex if Powerex:

(a) files or has filed against it any court process for protection from creditors or resulting in commencement of bankruptcy, insolvency, financial reorganization, liquidation or similar proceedings;

(b) takes or is the subject of proceedings for its winding up, dissolution or liquidation;

(c) has a secured party or a receiver, trustee or similar person take possession of or commence proceedings against substantially all of its assets;

(d) becomes bankrupt or insolvent, however evidenced; or

(e) is in material breach of this Agreement and such breach continues after the Province has given Powerex written notice of the breach and a reasonable opportunity to cure the breach.

15.2. By Powerex

Powerex will be entitled to terminate this Agreement and the assignments under it upon notice in writing to the Province if the Province:

(a) is in material breach of this Agreement and such breach continues after Powerex has given the Province written notice of the breach and a reasonable opportunity to cure the breach; or

(b) fails to pay the entire negative balance in the Settlement Account within 180 days after a negative balance has been incurred.

15.3. **Accrued Obligations**

Upon termination of this Agreement, accrued obligations and liabilities will be preserved until satisfied.

16. **MISCELLANEOUS**

16.1. **Termination of Interim Agreement**

The parties acknowledge that the Interim Entitlement Return Agreement made effective April 1, 1998 among the Province, Powerex and B.C. Hydro is hereby terminated as of the Effective Date.

16.2. **Authorized Representatives**

Each party will appoint from time to time an authorized representative with authority on behalf of the appointing party to do anything within the discretion of the party under this Agreement; provided that the authorized representative will not have the authority to amend this Agreement.

16.3. **Severability**

If any provision of this Agreement is determined to be unenforceable, that provision will be deemed severed from and will not affect the enforceability of the remaining provisions.

16.4. **Notices**

All notices required under this Agreement must be in writing and given by mail, facsimile, or in such other form as the parties agree. Each party will designate in writing a person for purpose of receiving notice under this Agreement and contact information for such person (including address and facsimile number) within 60 days of the Effective

Date. Such designation may be changed by subsequent notice.

16.5. **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of British Columbia.

16.6. **Assignment**

No party will assign this Agreement or its rights under it without the prior written consent of the other parties, not to be unreasonably withheld.

16.7. **No third party Beneficiaries**

This Agreement will not impart any rights enforceable by any third-party (other than a permitted successor or assignee bound to this Agreement).

16.8. **Waiver**

No waiver by a party of any default by the other party will be construed as a waiver of any other default.

16.9. **Confidentiality**

This Agreement contains, and requires the exchange of, commercially sensitive information. The terms of this Agreement, including the pricing provisions of it and all other material terms will be kept confidential by the parties, except as the parties may agree or as required by any applicable laws, rules or regulations. If any party receives a request for this Agreement or any information exchanged in connection with it, that party will notify the other parties of the request and will take necessary steps to maintain confidentiality.

16.10. **Amendments**

The terms and conditions of this Agreement may be amended only by agreement in writing of the parties.

16.11. **Entire Agreement**

This Agreement represents the entire agreement among the parties relating to the subject matter of this Agreement and supersedes all prior negotiations and agreements, whether oral or in writing.

IN WITNESS WHEREOF the parties have executed this Agreement to be effective on the Effective Date.

PROVINCE OF BRITISH COLUMBIA

By: /s/ [Illegible]

Minister of Employment and Investment

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY in its capacity as the Canadian Entity under the Treaty

By: /s/ [Illegible]

BRITISH COLUMBIA POWER EXCHANGE CORPORATION

By: /s/ [Illegible]

APPENDIX 1

This Appendix 1 forms a part of the Entitlement Assignment Agreement among Province of British Columbia, British Columbia Hydro and Power Authority and British Columbia Power Exchange Corporation effective the 1st day of April, 1999 (the "Agreement")

1. **DEFINITIONS**

1.1. Capitalized terms used in this Appendix will have the meanings ascribed to them by the Agreement or by this Appendix, as the case may be.

1.2. In this Appendix 1, all prices and other dollar amounts are in U.S. dollars.

1.3. **DowJones Index Price**

For purposes of the calculations in Sections 2.1(a) and 2.2(a) of this Appendix 1, it is assumed that the DowJones Mid-Columbia firm price indexes are determined in the manner described in, and for the On-Peak, Off-Peak and 24-Hour periods specified in, the DowJones "Wholesale Electricity Price Indexes – Mid-Columbia", as attached to and forming a part of this Appendix 1. In the event that the index prices referred to in Sections 2.1(a) and 2.2(a) of this Appendix 1 are no longer determined in the manner described in such attachment, then notwithstanding the frequency limitation in Section 6.3 of the Agreement, if the change is material, either party may, by notice to the other party, seek to renegotiate the then current pricing methodology in accordance with Section 6.3 of the Agreement.

2. **INITIAL MONTHLY PRICING FOR CANADIAN ENTITLEMENT**

2.1. **Initial Monthly Price**

The Province and Powerex agree that as at the Effective Date, the Monthly Price for Canadian Enti-

tlement will be determined in accordance with the following pricing methodology and that such pricing methodology meets the Entitlement Pricing Principle:

(a) the average of the prices for all On-Peak hours in the Month, except On-Peak hours on Sundays or NERC holidays and except On-Peak hours during which Canadian Entitlement deliveries are curtailed, where the price for each On-Peak hour will be the lesser of:

A. the Price Cap, and

B. the daily DowJones Mid-Columbia firm index price per MW.h for On-Peak Hours for that day;

(b) minus $1.89 per MW.h;

(c) minus an amount equal to 0.01425 times the price determined in accordance with Section 2.1(a) of this Appendix 1.

2.2. **Initial ATC Pricing for Purchases**

The Province and Powerex agree that as at the Effective Date, the ATC Price for deemed purchases of the PFJ Block Amount for any Month will be determined in accordance with the following pricing methodology and that such pricing methodology meets the Purchases Pricing Principle:

(a) the average of the prices for all hours in a Month, where the price for each hour will be the lesser of:

(A) the Price Cap; or

(B) the daily DowJones Mid-Columbia firm index price per MW.h as follows:

(i) for each On-Peak hour of each day except NERC holidays or Sundays, the firm On-Peak index for that day; or

(ii) for each Off-Peak hour of each day except NERC holidays or Sundays, the firm Off-Peak index for that day; or

(iii) for each hour on any NERC holiday or Sunday, the 24-Hour firm index for that day.

2.3. **Calculation of Price Cap**

For purposes of this Appendix 1, "Price Cap" means a price for each Pricing Year that is the highest value of the following 14 values determined for the months October through March of the preceding Pricing Year and April of the Pricing Year in question:

(a) the Forward Prices for the following August, determined separately for each of the 7 months from October to April, inclusive; and

(b) the Forward Prices for the following September, determined separately for each of the 7 months from October to April, inclusive.

For purposes of this Section 2.3 of Appendix 1:

"Forward Price" means the average of the forward prices per MW.h on each trading day of the month in question for firm energy delivered at Mid-Columbia during August or September, as the case may be, as determined by Powerex pursuant to Section 2.4 of this Appendix 1.

"Pricing Year" means a year commencing April 1 and ending the following March 31.

Powerex will provide the Province each month from October through April with the values determined for that month for purposes of establishing the Price Cap.

2.4. **Forward Price**

The Forward Price will be determined from time to time by Powerex based on the forward prices Powerex uses in the normal course of its business for purchase and sale decisions, derived from third party quotations and other available market information. In the event that a third party commences daily quotations of forward prices for deliveries at Mid-Columbia, and such forward price is reliable, the "Forward Price" will be determined based on daily closing prices quoted by such third party.

2.5. **Adjustment to Values**

As at the Effective Date, the parties have agreed on the values set out in Sections 2.1(b) and (c) of this Appendix 1. Such values may be changed in accordance with Section 6.3 of the Agreement.

EXHIBIT F

[Cover and Table of Contents Omitted]

BRITISH COLUMBIA – SEATTLE AGREEMENT

THIS AGREEMENT made this 30th day of March, A.D. 1984

Between:

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA
(hereinafter called "British Columbia")

AND

THE CITY OF SEATTLE,
a Municipal Corporation of the State of Washington,
one of the United States of America
(hereinafter called "Seattle")

Whereas the International Joint Commission (IJC), by Order dated April 28, 1982, urged British Columbia and Seattle as parties under that Order, to come to some agreement with respect to their differences over the authorized construction of High Ross Dam by Seattle which would raise the elevation of Ross Lake and thus of the Skagit River at the International Boundary from its present normal full pool elevation of 1602.5 to elevation 1725; and

Whereas by said Order the IJC considered that in the then existing circumstances Ross Lake should not be raised above its existing level provided that the City receive appropriate compensation for the loss of a valuable and reliable source of electric power in the form of High Ross Dam; and

Whereas by said Order the IJC sought the formal participation of the Governments of Canada and of the United States in order to implement any non-high dam agreement which might be reached, and toward that end established

a Joint Consultative Group consisting of representatives of the two Governments, of the Commission, and of the parties, to receive quarterly reports from the parties on their efforts to arrive at such an agreement; and

Whereas the parties have held numerous meetings, including those of their financial and technical groups since the above referenced Order of the IJC of April 28, 1982 and have reported fully to meetings of the Joint Consultative Group in June, September and December of 1982 and February, August and December of 1983 concerning their negotiations; and

Whereas the IJC, the parties and the respective Governments have concluded that an agreement between the parties should be confirmed by and be subject to a treaty between the Governments;

Now therefore the parties do hereby solemnly agree as follows:

Section 1. – Definitions

The following terms used in this Agreement or in Appendices hereto shall mean:

"Agreement" means this Agreement and its Appendices A-E.

"Normal full pool elevation" means the water level at the dam determined by means of measuring elevation above mean sea level, excluding variations due to wind and wave action on surface water and variations resulting from extraordinary flood conditions, and which in the case of Ross Lake is based on The City of Seattle Ross Dam datum for Ross Lake and in the case of Seven Mile Reservoir is based on the Geodetic Survey of Canada datum for the Seven Mile Reservoir.

"Notification" means notice in writing from the Premier of British Columbia to the Mayor of Seattle, or vice versa, of intention to discontinue certain provisions of the agreement. Such notice shall be deposited, registered and pre-

paid in the United States or the Canadian mail, as appropriate. Following mailing, such notice shall also be published in a daily newspaper of general circulation in both Seattle, Washington and Victoria, British Columbia. The notice shall be deemed to have been given upon the date of publication in Seattle or Victoria, whichever is later.

"Skagit bus" means the Diablo switchyard on the Skagit River, or its successor switchyard, which is the collection point for power from Diablo and Ross power houses on the Skagit River.

"Treaty" means the "Treaty between Canada and the United States of America relating to the Skagit River and Ross Lake, and the Seven Mile Reservoir on the Pend d'Oreille River" confirming this Agreement.

Section 2. – Term of Agreement

This Agreement will come into force on the date executed by British Columbia and Seattle and shall continue through January 1, 2066. If the Treaty has not come into force by December 31, 1984, this Agreement shall terminate on that date.

Seattle and British Columbia will jointly request the IJC to terminate its 1942 Order of Approval regarding the Ross Dam on the Skagit River, effective only upon the entry into force of the Treaty and the Agreement. Seattle and British Columbia recognize that the IJC may take such action on its own motion and agree that neither will object should the IJC so act.

Section 3. – Non-Flooding of Skagit Valley

Seattle shall not raise Ross Dam or operate Ross Lake above a normal full pool elevation of 1602.5, unless before January 1, 2061, a five-year notice of discontinuance period has commenced at the instance of British Columbia pursuant to Section 9, or a determination of material breach of the Agreement by British Columbia has been made pursuant to Section 10.

Section 4. – British Columbia to Supply Electricity

British Columbia shall supply Seattle with the electricity approximately anticipated from High Ross Dam, consisting of 37.3 average MW of firm energy, capacity based upon the difference between existing Ross Dam production and 532 MW, in the months of November through March, and capacity not exceeding 150 MW in the months of April through October, commencing January 1, 1986 and for the term of this Agreement. The specific amounts of firm energy and capacity and schedule of deliveries shall be as detailed in Appendix A, subject to modifications which may result from future discussions and mutual agreement between British Columbia Hydro and Power Authority and the Seattle City Light Department, or their successor agencies. Such schedule of deliveries shall only be excused during an event of force majeure, i.e., one beyond the control of British Columbia or which could not be avoided by the exercise of due care.

Section 5. – Seattle Payments for Electricity

Seattle shall make annual fixed capital payments to British Columbia prior to December 31 of each year beginning in 1986 to, and including the year 2020, of $21,848,000 (U.S.), which represents the annual cost that would have been incurred by Seattle through the construction of High Ross Dam. This amount will be augmented by annual payments by Seattle prior to December 31 of each year beginning in 1986 to and including the year 2065, representing the operating and maintenance expenses that would have been incurred by Seattle in the annual operation of High Ross Dam. The initial payment shall be $100,000 (U.S.), subsequent payments to change annually at the same rate as the U.S. Consumer Price Index. Although the fixed capital payments terminate in 2020, it is agreed that they shall be considered sufficient, together with the operation and maintenance equivalency payments, and the benefits of Seven Mile flooding rights,

to pay British Columbia for the delivery of electricity under Section 4 through January 1, 2066.

Section 6. – Wheeling Costs

The costs of wheeling up to 230 MW of power to the Seattle load center shall be the responsibility of British Columbia. Seattle will only be responsible for wheeling costs for capacity in excess of 230 MW. Specific wheeling arrangements shall be as described in Appendix A. British Columbia and Seattle will work in concert to achieve mutually beneficial wheeling arrangements, but in no case will the costs be at a higher rate than those paid by Seattle for similar wheeling.

Section 7. – Flooding in the United States by Seven Mile Reservoir

Seattle agrees that British Columbia may operate Seven Mile Reservoir to normal full pool elevation of 1730 feet, flooding into Washington State to a depth of approximately 15 feet until January 1, 2066, subject to the provisions of 9(D)(ii). British Columbia shall deliver to Seattle energy and capacity lost at Boundary Dam due to tailwater encroachment by the Seven Mile Reservoir in accordance with Appendix A. British Columbia shall also deliver energy as required by 9(C)(ii). British Columbia shall not raise Seven Mile Reservoir across the international boundary prior to January 1, 1986, without prior agreement with Seattle.

Section 8. – Periodic Review

At intervals of no more than ten years after coming into force of this Agreement, British Columbia and Seattle shall review the terms and conditions of the Agreement in light of all applicable circumstances in order to determine the advisability of beneficial changes. Failure to agree to any proposed change shall not be subject to the provisions of Section 10.

Section 9. – Discontinuance of Certain Obligations

A. Seattle may discontinue its obligation to make payments under Section 5, and British Columbia may discontinue its obligation to deliver capacity and energy under Sections 4 and 6 by notification. Following notification of either British Columbia's or Seattle's decision to so discontinue there will be a one-year review period during which the notification may be withdrawn unilaterally by the notifying party upon like notification. At the end of this one-year review period, if the notification is not withdrawn, a five-year notice period shall commence, at the end of which period discontinuance will become effective and the relevant obligations will end, unless notification is withdrawn by consent of both British Columbia and Seattle, or unless both agree to earlier discontinuance. Notification of intent to so discontinue may not be given prior to January 1, 1991, by either British Columbia or Seattle.

B. In the event of discontinuance initiated by Seattle, its authority to flood into British Columbia will be limited to normal full pool elevation of 1602.5 feet.

C. In the event of discontinuance initiated by British Columbia and the commencement of a five-year notice period:

   (i) Seattle may begin construction of High Ross Dam immediately and flood land in British Columbia up to normal full pool elevation 1725 feet. Full compensation to British Columbia for the duration of this Agreement for such operation will be provided for by payment for actual costs of road relocation, recreation improvements, and reservoir clearing as set forth in Appendix B, by the continued flooding of the Seven Mile Reservoir into the United States to normal full pool elevation 1730 feet and by continued contributions to and operation of the Environmental Endowment Fund.

(ii) If Seattle does not exercise its right under 9(C)(i), compensation to be provided by British Columbia to Seattle for the continued operation of the Seven Mile Project, in addition to delivery to Seattle of energy and capacity lost at Boundary Dam by tailwater encroachment, will be the equivalent of 1.05 average MW of firm energy delivered annually at Blaine.

(iii) Subject to the provisions of 9(D)(ii), British Columbia will continue to have authority to operate the Seven Mile Project at normal full pool elevation 1730 feet.

(iv) British Columbia shall return to Seattle:

(a) should Seattle opt to construct High Ross Dam, a sum of money in U.S. currency sufficient to construct High Ross Dam, and either money or replacement power sufficient to fully replace power losses to Seattle due to construction. The sum to be returned shall include only cost items specified in Appendix B, adjusted to reflect actual costs at the time construction is commenced, less the capitalized value at that date of Seattle's capital payments not made or to be made under this Agreement through the year 2020;

(b) should Seattle opt not to construct High Ross Dam, the lesser of: a sum in U.S. currency sufficient to acquire equivalent energy resources until 2066 less the capitalized value, in the year Seattle so opts, of Seattle's capital payments not made or to be made under this Agreement through the year 2020; or that sum provided in 9(C)(iv)(a).

(v) Seattle shall exercise its option either to construct High Ross Dam under 9(C)(iv)(a) or not to construct under 9(C)(iv)(b) by giving notice to British

Columbia. Seattle's notice shall include an estimate of the lesser of a sum sufficient to construct High Ross Dam or to acquire equivalent energy resources, as appropriate, less the capitalized value of capital payments not made or to be made to British Columbia, together with a schedule for construction of High Ross Dam or acquisition of alternative resources. Within three months of such notice British Columbia shall give notice to Seattle of its intention to: repay immediately, as construction costs are incurred, or on the completion of High Ross or its alternative resource; its decision to provide Seattle either money or power to replace power losses during construction; and, any objections to Seattle's estimate of British Columbia's repayment obligation. Failure to give such notice by British Columbia shall be deemed to indicate: British Columbia's agreement with Seattle's cost estimates; its repayment on the earliest repayment date; and its payment for replacement power losses in money. Notices hereunder shall be given in writing from the Premier of British Columbia to the Mayor of Seattle, or vice versa, which shall be deposited, registered and prepaid in the United States or Canadian mail, as appropriate, and shall be deemed to have been given as of the date of mailing.

(vi) Seattle shall retain the option to exercise the provisions of either 9(C)(iv)(a) or 9(C)(iv)(b) for the remaining period of this Agreement, provided that British Columbia shall retain control of funds paid by Seattle prior to such discontinuance, until following exercise of such option by Seattle, repayment is made by British Columbia in accordance with the terms of 9(C)(iv) and (v).

D. Interim remedies to Seattle shall include the following:

(i) In order that Seattle not be damaged pending the submission to and determination by the arbitration tribunal provided for in Section 10, that British Columbia has failed to discharge its obligations to deliver energy and capacity to Seattle under the Agreement, British Columbia shall take all possible measures during this Agreement to ensure that there shall be immediately transferred to Seattle from sources available to British Columbia in the United States, or exported by British Columbia to the United States, such energy and capacity as may be required to fulfill British Columbia's obligation to deliver electricity under the Agreement.

(ii) If the amounts of energy and capacity required under the Agreement are not delivered or transferred to Seattle, except during an event of force majeure, or if British Columbia does not satisfy an arbitration award under Section 10, British Columbia shall forthwith lower Seven Mile Reservoir so as not to extend across the international boundary. Upon satisfaction of British Columbia's obligations to Seattle to deliver energy and capacity under the Agreement, and payment in full of any arbitration award to Seattle by British Columbia, or by Canada to the United States under the Treaty, British Columbia may raise the normal full pool elevation of the Seven Mile Reservoir to 1730 feet.

(iii) Should the arbitration tribunal determine that British Columbia had not failed in its obligations under 9(C)(iv) or (v), had not failed to deliver power, or had not otherwise been in material breach, the tribunal may find compensation payable to British Columbia from Seattle to the extent of the electricity received by Seattle from

British Columbia sources and the loss of electricity through lowering the Seven Mile Reservoir as provided for in subparagraphs (i) and (ii) above.

Section 10. – Dispute Resolution

Disputes between British Columbia and Seattle arising out of this Agreement shall be resolved exclusively as provided in this Section. Pending any decision by a consulting board or by arbitration, the obligations of the parties shall remain effective and outstanding, including without limitation the obligation of British Columbia to deliver electricity under this Agreement.

(a) At the request of both British Columbia and Seattle, any matter may be referred to a consulting board composed of four members, two of whom shall be appointed by British Columbia and two by Seattle. A decision of a majority of the consulting board shall be final and binding on the parties. Any matter not decided by majority vote within three months of the date of submission shall be referred to the arbitration tribunal. The consulting board may not consider an allegation, or make a determination, of material breach of the Agreement.

(b) At the request of either British Columbia or Seattle, any matter may be referred for determination to an arbitration tribunal which shall decide such questions in accordance with the rules in Appendix C. All decisions of the arbitration tribunal shall be final and binding and promptly carried out by British Columbia and Seattle.

(c) If the consulting board or the arbitration tribunal deems it appropriate, it may assess an amount of compensation in either electricity or money to reimburse the complainant for any losses resulting from nonperformance under the Agreement. Upon a determination of material breach by an arbitra-

tion tribunal, the performance of obligations and consequences upon discontinuance set forth in Section 9 shall be required and imposed by such tribunal.

(d) The Governments of Canada and the United States of America shall be notified of the reference of any matter to an arbitration tribunal. Although not parties, they may appear before and make submissions to such tribunal.

(e) Copies of all documents and notices of all proceedings shall be provided to the Governments of Canada and the United States of America in the same manner and at the same time as they are provided to the parties to the arbitration pursuant to the rules contained in Appendix C.

Section 11. – Environmental Endowment Fund

British Columbia and Seattle shall establish an Environmental Endowment Fund to finance and an Environmental Endowment Commission to administer the provision and maintenance of environmental amenities and recreation facilities in the Ross Lake/Skagit Valley area, as outlined in Appendix D, to which Seattle will be the prime initial contributor.

Section 12. – Reversion of Seattle Property to British Columbia

Seattle shall convey to British Columbia, upon the coming into force of the Treaty, Lots 221 and 222, Group 1, Yale Division, Yale District, Penticton Assessment Area, but such conveyance will not adversely affect Seattle's rights under Sections 3 and 9. British Columbia shall not administer the Skagit Valley below elevation 1725 in a manner inconsistent with Seattle's exercise of rights upon discontinuance as provided in Sections 3 and 9, nor shall it divert any water of the Skagit River from its natural channel for any use other than consumptive use within the watershed of that river.

Section 13. – Agreement Report

A general description of the Agreement, as defined in Section 1 hereof, its background and its intended operation, is attached hereto as Appendix E. It is a part of the Agreement, provided that in the event of any conflict between Appendix B and Sections 1-12 hereof, the latter shall govern.

[List of Appendices Omitted]

IN WITNESS WHEREOF this Agreement has been executed on behalf of the parties by their duly authorized representatives.

On behalf of the Province of British Columbia

By:

The Honourable A.J. Brummet
Minister of Environment

By:

The Honourable G.B. Gardom
Minister of Intergovernmental Relations

On behalf of The City of Seattle

By:

Mayor of Seattle

In the presence of:

Attest:

Deputy City Comptroller

EXHIBIT H

AGREEMENT FOR THE TRANSMISSION OF SKAGIT TREATY POWER BETWEEN BRITISH COLUMBIA HYDRO AND POWER AUTHORITY AND THE CITY OF SEATTLE

This Agreement (hereinafter "Agreement") is made effective as of the 1st day of February, 1999, between British Columbia Hydro and Power Authority, a Crown corporation of the Province of British Columbia, Canada (hereinafter "BC Hydro") and the City of Seattle, a municipal corporation of the State of Washington of the United States of America, acting through its City Light Department (hereinafter "Seattle"), as follows:

WHEREAS, Seattle and the Government of British Columbia (hereinafter the "Province") entered into an agreement dated March 30, 1984, providing for, among other things, the supply of power from the Province to Seattle under the Skagit Treaty for the period January 1, 1986, through January I, 2066, unless earlier terminated by certain events (hereinafter the "Skagit Agreement"); and

WHEREAS, the Province and BC Hydro entered into an agreement dated December 3, 1985, providing for the assignment and transfer of certain benefits and obligations of the Province under the Skagit Agreement to BC Hydro, a Crown corporation of the Province of British Columbia, in certain matters relating to this Agreement; and

WHEREAS, on November 10, 1987, Seattle and the Bonneville Power Administration (hereinafter "BPA") entered into Transmission Contract No. DE-MS79-86BP92047, (hereinafter the "IR Transmission Contract"), which provided for the transmission of the amount of power to be made available from the Province to Seattle pursuant to the Skagit Agreement and for the provision of Dower to compensate for losses associated with the wheeling of such power; and

WHEREAS, BC Hydro and Seattle entered into an agreement dated November 30, 1987, providing for the method of payment for the transmission of electric power under the IR Transmission Contract (hereinafter the "Payment Agreement") for a period from January 1, 1988, until December 31, 2005, unless earlier terminated by certain events; and

WHEREAS, on November 21, 1996, BC Hydro and Seattle entered into a Temporary Agreement for Transmission of Skagit Treaty Power, which agreement was subsequently amended on June 12, 1997, and further mended on December 19, 1997 (hereinafter the "Temporary Agreement"); and

WHEREAS, on November 24, 1997 the Parties and representatives of their respective governments met and agreed to initiate discussions regarding a review of various aspects of the Skagit Agreement, as provided in Section 8 of the Skagit Agreement; and

WHEREAS, on December 11, 1997, BC Hydro and Seattle entered into an Agreement in Principle for the Wheeling of Skagit Treaty Power (hereinafter "Agreement in Principle") and agreed to negotiate in good faith definitive agreements incorporating such principles, and to diligently seek to negotiate any related agreements with BPA; and

WHEREAS, consistent with the provisions of the Skagit Agreement specifying that the Province and Seattle will work in concert to achieve mutually beneficial wheeling arrangements, BC Hydro and Seattle have determined to replace the IR Transmission Contract and the Temporary Agreement with Point-To-Point Transmission Service under BPA's Open Access Transmission Tariff and the other arrangements provided for in this Agreement; and

WHEREAS, Seattle, concurrently with execution of this Agreement, is executing a Point-To-Point Service Agreement under BPA's Open Access Transmission Tariff that supersedes and replaces the IR Transmission Contract and

extends until 2400 hours on December 31, 2005 (hereinafter the "Skagit PTP Agreement"); and

WHEREAS, BC Hydro's wholly-owned subsidiary the British Columbia Power Exchange Corporation (hereinafter "Powerex") executed a Replacement Power Sales Agreement with BPA, effective February 1, 1999, attached as Appendix A hereto;

NOW, THEREFORE, Seattle and BC Hydro (hereinafter "the Parties") agree as follows:

Section 1. Term of Agreement

1.1 This Agreement shall become effective at 2400 hours on February 1, 1999, and shall continue in effect until 2400 hours on December 31, 2005, unless earlier terminated pursuant to Section 6 or Section 10 of this Agreement.

1.2 This Agreement, when effective, will supersede the Payment Agreement and the Temporary Agreement, and the Payment Agreement and the Temporary Agreement will thereafter be of no further force or effect.

Section 2. Availability of Electric Power

2.1 BC Hydro's obligations to make power available to BPA at the Point of Interconnection specified in Exhibit C of the Skagit PTP Agreement for delivery to Seattle's load center, and Seattle's obligations to take delivery of such power from BPA and to pay BC Hydro for such power, are as specified in the Skagit Agreement (hereinafter "Treaty Power"). During the team of this Agreement, the Skagit PTP Agreement shall be used to effect:

(A) Deliveries of Treaty Power by BC Hydro, and associated losses for which BC Hydro is responsible, to the point of interconnection with BPA specified in the Skagit PTP Agreement;

(B) Deliveries of power other than Treaty Power scheduled by BC Hydro for delivery using transmission capacity in excess of Seattle's schedule of Treaty

Power deliveries under the Skagit PTP Agreement up to a maximum of 230 MW (hereinafter "Non-Treaty Power"); and

(C) Deliveries of power returned to BC Hydro by Seattle from storage behind Ross Dam.

Execution of this Agreement by BC Hydro and Seattle does not modify, in any way, their respective rights and obligations regarding power and transmission under the Skagit Agreement.

2.2 Unless otherwise specified in this Agreement, the terms and conditions of the Skagit PTP Agreement apply to BC Hydro and Seattle when using transmission on BPA's system pursuant to this Agreement.

2.3 Except for any alternate Point of Delivery and/or alternate Point of Interconnection that have been mutually agreed on by BC Hydro and Seattle on a temporary basis as provided in this Agreement:

(A) Seattle agrees not to request BPA to make any change to the terms or conditions of the Skagit PTP Agreement, including any change to the Delivery Point or Point of Interconnection specified in Exhibit C to the Skagit PTP Agreement, without obtaining the prior written consent of BC Hydro; and

(B) Seattle agrees not to consent to any change to the terms or conditions of the Skagit PTP Agreement requested by BPA, without obtaining the prior written consent of BC Hydro.

Section 3. Assignment by Seattle to BC Hydro and BC Hydro's Reassignment Rights

3.1 Pursuant to the Skagit PTP Agreement, Seattle has contracted with BPA for 230 MW of transmission capacity (hereinafter "Skagit Transmission Capacity"). Seattle hereby assigns to BC Hydro, for the term of this Agreement, all of Seattle's rights and obligations with respect to such Skagit Transmission Capacity, subject to the provi-

sions of Section 6 of this Agreement regarding revocation of such assignment by Seattle. Seattle agrees to provide any necessary notice to BPA regarding such assignment to BC Hydro.

3.2 BC Hydro intends to delegate its operating responsibilities under the Skagit PTP Agreement and this Agreement to Powerex or to a U.S. subsidiary to be formed by BC Hydro or Powerex (hereinafter "U.S. Sub"), and BC Hydro may elect to reassign its rights and obligations under the Skagit PTP Agreement and this Agreement to Powerex or U.S. Sub. Seattle hereby consents to such delegation and/or reassignment; provided, however, that BC Hydro shall not be relieved of its obligations under the Skagit Agreement, the Skagit PTP Agreement or this Agreement as a result of such delegation and/or reassignment.

3.3 BC Hydro may make monthly, weekly, daily or hourly reassignments of Skagit Transmission Capacity in excess of Seattle's schedule of Treaty Power deliveries under the Skagit PTP Agreement up to a maximum of 230 MW (hereinafter "Excess Skagit Transmission Capacity") to third parties as permitted by the Skagit PTP Agreement and BPA's Open Access Transmission Tariff, and Seattle hereby consents to such reassignments; provided that such reassignments by BC Hydro are made subject to recall if required to meet BC Hydro's Treaty Power delivery obligations under the Skagit Agreement; and provided further that such reassignments by BC Hydro are made subject to the scheduling provisions of Section 5 of this Agreement.

3.4 All other assignments or reassignments by either Party shall require the written consent of the other Party obtained in advance, which consent will not be unreasonably withheld; provided, however, that neither Party shall be relieved of its obligations under the Skagit Agreement, the Skagit PTP Agreement or this Agreement as a result of such assignment or reassignment.

3.5 BC Hydro agrees to indemnify Seattle and hold it harmless from any claim or cause of action arising from BC Hydro's assignment, and any subsequent reassignment, of transmission capacity on BPA's system pursuant to this Agreement.

Section 4. Use of Skagit Transmission Capacity by BC Hydro

4.1 All Excess Skagit Transmission Capacity under this Agreement shall be available for use by BC Hydro for deliveries of Non-Treaty Power to Seattle or to any third party or for BC Hydro's own account, subject to the conditions specified in Section 4.2 hereof.

4.2 BC Hydro shall limit its use of that portion of Excess Skagit Transmission Capacity between prescheduled Skagit Treaty Power deliveries under the Skagit Agreement and Seattle's maximum power capacity entitlement under the Skagit Agreement to energy transactions using non-firm transmission.

4.3 In using Excess Skagit Transmission Capacity, BC Hydro agrees to comply with the terms and conditions of BPA's Open Access Transmission Tariff, as such Tariff may exist from time to time during the term of this Agreement.

4.4 Except for any alternate Point of Delivery and/or alternate Point of Interconnection that have been mutually agreed on by BC Hydro and Seattle on a temporary basis as provided in this Agreement:

(A) BC Hydro agrees not to request BPA to make any change to the terms or conditions of the Skagit PTP Agreement, including any change to the Delivery Point or Point of Interconnection specified in Exhibit C of the Skagit PTP Agreement, without obtaining the prior written consent of Seattle; and

(B) BC Hydro agrees not to consent to any change to the terms or conditions of the Skagit PTP Agreement

requested by BPA, without obtaining the prior written consent of Seattle.

4.5 Designation by BC Hydro of an alternate non-firm Delivery Point or alternate non-firm Point of Interconnection under the Skagit PTP Agreement for transmission of Non-Treaty Power as provided in this Agreement shall not be considered to be a change in the Skagit PTP Agreement that requires prior consent by Seattle.

4.6 BC Hydro agrees to comply with any requirements imposed by the United States Federal Energy Regulatory Commission or any successor authority or organization, the Western Regional Transmission Association, the Northwest Regional Transmission Association, or any other Regional Transmission Association to which BC Hydro and Seattle both belong that affects the uses and/or assignments of Skagit Transmission Capacity under this Agreement.

4.7 If BPA curtails or interrupts transmission service available under the Skagit PTF Agreement to the extent that any scheduled deliveries of Treaty Power and associated losses, Non-Treaty Power or power returned to BC Hydro from storage behind Ross Dam cannot be effected, then in such event BC Hydro and Seattle agree that scheduled deliveries of Treaty Power and associated losses shall have priority over scheduled deliveries of Non-Treaty Power and power returned to BC Hydro by Seattle from storage behind Ross Dam.

Section 5. Scheduling

5.1 BC Hydro shall schedule all Treaty Power pursuant to schedules supplied to BC Hydro by Seattle. Seattle's prescheduling, scheduling and scheduling changes of desired hourly quantities of Treaty Power with BC Hydro shall continue to be made in accordance with Section 4 of the Skagit Agreement, Sections 2, 5 and 8 of Appendix A to the Skagit Agreement, and Letter of Interpretation #5 to the Skagit Agreement.

5.2 BC Hydro shall be responsible for scheduling directly with BPA all deliveries and transmission of Treaty and Non-Treaty Power and associated losses.

5.3 In the event that Seattle requests a change to its seven-day schedule of Treaty Power deliveries from BC Hydro pursuant to Section 5 of Appendix A to the Skagit Agreement, and BC Hydro determines that it can reasonably respond to such request, then BC Hydro will communicate the requested Treaty Power delivery schedule change to BPA and will request that a corresponding change to the transmission schedule be made by BPA to the extent such change can be accommodated by BPA under its Open Access Transmission Tariff.

5.4 Scheduling by BC Hydro of Skagit Transmission Capacity shall be made in accordance with BPA's transmission scheduling procedures for Point-to-Point Transmission Service as prescribed by the Skagit PTP Agreement and BPA's Open Access Same-Time Information System (hereinafter "OASIS") requirements as they may exist from time to time during the term of this Agreement.

5.5 BC Hydro shall be responsible for scheduling with any transmission provider other than BPA that is involved in affecting deliveries of: (A) Treaty Power to Seattle; (B) losses associated with Treaty Power to BPA; or (C) Non-Treaty Power.

5.6 No Treaty Power shall be delivered to Seattle's load center from any Delivery Point or Point of Interconnection other than that specified in Exhibit C to the Skagit PTP Agreement without Seattle's prior consent.

5.7 From time to time during the term of this Agreement, either BC Hydro or Seattle may request the other Party to consent to temporary changes in the Point of Delivery and/or Point of Interconnection for Treaty Power specified in Exhibit C to the Skagit PTP Agreement. If the prior consent of the other Party to the change is obtained, then power will be delivered to a mutually agreeable al-

ternate Point of Delivery and/or from a mutually agreeable alternate Point of Interconnection pursuant to this Agreement, subject to the following conditions:

(A) The Parties shall follow the scheduling procedures applicable to Treaty Power;

(B) If transmission arrangements in addition to those specified in the Skagit PTP Agreement are required to effect deliveries at the alternate Point of Delivery and/or from the Point of Interconnection, then, unless the Parties agree otherwise, the Party requesting the change shall be responsible for such additional transmission arrangements, including risk of curtailment or interruption of such additional transmission arrangements and any additional costs of transmission, including incremental losses; and

(C) Seattle shall deem BC Hydro to have satisfied its Treaty Power delivery obligations under the Skagit Agreement to the extent of such deliveries to the mutually agreeable alternate Point of Delivery and/or from the Point of Interconnection.

5.8 If delivery of Treaty Power is delayed, interrupted or curtailed due to BC Hydro's failure to follow the scheduling procedures prescribed in Section 5 of this Agreement, Seattle may elect one of the following options:

(A) BC Hydro shall arrange to make replacement power available in kind pursuant to the Replacement Power Sales Agreement between Powerex and BPA attached hereto as Appendix A; or

(B) BC Hydro shall reimburse Seattle for its actual out-of-pocket costs of securing replacement power from a third-party supplier, plus any incremental transmission costs incurred by Seattle in transmitting such power, or

(C) Seattle may file a Notice of Arbitration pursuant to Section 10 of the Skagit Agreement requesting an Arbitration Tribunal to assess an amount of compensation in either electricity or money to reimburse Seattle for any losses resulting from such nonperformance by BC Hydro.

The remedy selected by Seattle under this Section 5.8 is in addition to any other remedy Seattle may have with respect to Treaty Power deliveries as specified in the Skagit Agreement.

5.9 Each Party shall have a duty to mitigate damages and shall use all reasonable efforts to minimize any damages it may incur.

5.10 The Parties will schedule with BPA returns of power stored by BC Hydro behind Ross Dam net of Treaty Power deliveries.

Section 6. Delivery and Tagging

6.1 Unless otherwise agreed to by the Parties, arrangements for deliveries of Treaty Power by BC Hydro to Seattle under normal operating conditions shall demonstrate compliance with the following tagging requirements:

(A) The power shall be supplied firm BC Hydro's firm system supply;

(B) The power shall be tagged as "BCHA-SYS/BC" to the Point of Interconnection with BPA, provided that when BPA's OASIS allows for separate tagging of the Eastern and Western Points of Interconnection on the U.S. - Canadian Border, then the power shall be tagged as being delivered in the vicinity of Blaine at the Ingledow-Custer Interconnect;

(C) The power shall be tagged as being delivered to Seattle from the applicable Point of Interconnection referred to in Section 6.1(B), above, using firm Skagit Transmission Capacity on the BPA system;

(D) The power shall be tagged as being delivered to the Seattle load center; and

(E) The comment field of the tag shall include the reference "Skagit Power at Blaine (POR)."

A *pro forma* example of a tag that complies with these tagging requirements and reflects full assignment of the Skagit FIT Agreement by Seattle to BC Hydro is attached as Appendix C to this Agreement.

These tagging requirements shall not apply during periods of "uncontrollable forces" (as that term is defined in Section 8.1 of BPA's Open Access Transmission Tariff) on the BPA, BC Hydro or Seattle systems.

6.2 To assist Seattle in verifying that the requirements of Section 6.1 of this Agreement have been complied with by BC Hydro, BC Hydro agrees to furnish Seattle daily on the preschedule day with copies of that day's tagging information furnished by BC Hydro to BPA's OASIS in compliance with the requirements of the North American Electric Reliability Council or any successor organization or authority (hereinafter "NERC"). If during the term of this Agreement such tagging information is no longer required to be submitted to BPA's OASIS, or is not required to be submitted in essentially the same form as required as of the date of execution of this agreement, then BC Hydro will furnish equivalent information to Seattle on a daily basis in a form mutually agreeable to the Parties.

6.3 Any dispute between the Parties as to whether the tagging requirements of Section 6.1 of this Agreement have been complied with by BC Hydro shall be resolved pursuant to the dispute resolution procedures set forth in Section 10 of the Skagit Agreement. If it is determined by an Arbitration Tribunal that any failure by BC Hydro to meet the tagging requirements of Section 6.1 has resulted in a material breach of BC Hydro's delivery obligations to Seattle under the Skagit Agreement, then Seattle may, upon 30 days written notice to BC Hydro, revoke its as-

signment of Skagit Transmission Capacity to BC Hydro and terminate this Agreement. Such remedy shall be in addition to any other remedy that may be available to Seattle under this Agreement and the Skagit Agreement.

Section 7. Cost Responsibility and Payment

7.1 BC Hydro shall make payment directly to BPA of all charges billed by BPA under the Skagit PTP Agreement.

7.2 BC Hydro shall be responsible for the cost of transmission and associated losses of up to 230 MW delivered to the Seattle load center, and BC Hydro shall be responsible for associated losses above 230 MW delivered to the Seattle load center.

7.3 The Skagit PTP Agreement will not be used by Seattle for transmission above 230 MW, and Seattle shall independently arrange for such transmission. Except as provided in Section 7.2, above, and Section 7.5, below, Seattle shall be responsible for the cost of transmission above 230 MW.

7.4 BC Hydro shall be responsible for providing the Ancillary Services listed as the responsibility of the Transmission Customer in Exhibit H to the Skagit PTP Agreement.

7.5 If BPA during the term of this Agreement implements a two-part rate for transmission service under the Skagit PTP Agreement, then BC Hydro shall be responsible for the energy component of BPA's transmission rate for wheeling in excess of 230 MW, and Seattle shall be responsible for the capacity component of BPA's transmission rate for wheeling in excess of 230 MW; provided, however, that if Seattle elects a higher cost method than the Skagit PTP Agreement for wheeling in excess of 230 MW, Seattle will be responsible for the difference between the energy component of BPA's rate under the Skagit PTP Agreement and Seattle's elected rate.

7.6 Seattle shall be responsible for any Use of Facilities charges imposed by BPA for transmission of Treaty Power, and Seattle shall reimburse BC Hydro for same.

7.7 In the event that BC Hydro uses a transmission provider in addition to BPA to effect deliveries of Treaty Power to Seattle, BC Hydro shall be responsible for the costs of such transmission service.

Section 8. Loss Compensation

8.1 To compensate for losses incurred in connection with transmission service under the Skagit PTP Agreement, BC Hydro shall deliver or cause to be delivered to BPA at the Point of Interconnection specified in the Skagit PTP Agreement, at the corresponding hour 168 hours later, the amounts of electric power required by BPA pursuant to the Skagit PTP Agreement for loss compensation for all power wheeled under this Agreement.

8.2 Pursuant to paragraph 1(g)(4) of Exhibit H to the Skagit PTP Agreement, BC Hydro shall provide BPA appropriate notice of its election for BPA's Fiscal Year of the method of loss compensation specified in paragraph 1(g)(2)(C) of the Skagit PTP Agreement.

Section 9. Failure of Transmission on BPA's System

9.1 Should delivery of Treaty Power be delayed, interrupted or curtailed due to a failure of the Federal Columbia River Transmission System, Seattle may request BPA to make available equivalent amounts of replacement power at Seattle's expense pursuant to the Replacement Power Sales Agreement between Powerex and BPA attached hereto as Appendix A. Seattle shall reimburse Powerex for any amounts invoiced by BPA to Powerex for deliveries of such replacement power to Seattle pursuant to this Section 9.1, including any additional transmission costs.

Section 10. Enforcement and Dispute Resolution

10.1 For the limited purpose of any action by Seattle seeking to enforce the remedies specified in Sections 5.6(A) and (B) of this Agreement, or to collect or enforce an award of compensation by an Arbitration Tribunal pursuant to Section 5.6(C) or Section 6.3 of this Agreement, BC Hydro agrees that it will accept service of process from and be subject to the jurisdiction of the United States District Court for the Western District of Washington, and any appellate courts which have review powers over that court without waiving or prejudicing any defenses, counterclaims or setoffs BC Hydro may assert in connection with any such action by Seattle. Should Seattle obtain a fatal judgment against BC Hydro under this Section 10.1, BC Hydro further agrees that any assets or receivables it may have in the United States are subject to attachment or levy in accordance with the Federal Rules of Civil Procedure if necessary to satisfy such judgement.

10.2 Any operational issues that arise between the Parties in carrying out their respective functions under this Agreement and that are not otherwise resolved by mutual agreement will be submitted to the Operating Committee created under Section 7 of Appendix A of the Skagit Agreement (hereinafter "Operating Committee") for resolution, including but not limited to any operational issues resulting from changes made by BPA to its Open Access Transmission Tariff during the term of this Agreement.

10.3 Except as otherwise provided in this Agreement, all other disputes between the Parties arising under this Agreement shall be resolved pursuant to the procedures set forth in Section 10 of the Skagit Agreement.

Section 11. Audits

11.1 Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to ensure that such other Party has complied with the provi-

sions of this Agreement, including but not limited to the following:

(A) If requested, BC Hydro shall provide to Seattle information supporting the daily tagging summaries regarding Treaty Power deliveries furnished by BC Hydro pursuant to Section 6.2 of this Agreement; and

(B) Seattle shall furnish to BC Hydro data supporting and quantifying any claim asserted or remedy elected by Seattle under Section 5.6 of this Agreement.

This provision for audits shall continue in effect for a period of one year after the termination of this Agreement.

Section 12. Governing Law

12.1 This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the United States of America.

Section 13. Entirety

13.1 This Agreement constitutes the entire agreement between the Parties with respect to the matters set forth herein. Other than the Agreement in Principle, which is superseded by this Agreement, when effective, and is thereafter of no further force or effect, there are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Except for any matters which, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

Section 14. Severability

14.1 Except as otherwise provided herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties will

not otherwise affect the lawful obligations that arise under this Agreement.

Section 15. No Third Party Beneficiaries

15.1 Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

Section 16. Non-Waiver

16.1 No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

Section 17. Notices

17.1 Any notices under this Agreement, other than notices required in performing transmission scheduling, shall be made in writing to the representatives of the Parties designated to serve on the Operating Committee. Such notices may be delivered by facsimile or by hand. Notice of facsimile shall be confirmed by telephone on the day of transmittal.

Section 18. Right To Reopen Negotiations

18.1 Either Party, upon written notice to the other within 30 days of the occurrence of the following events, may request renegotiation of affected terms of this Agreement:

(A) BPA materially alters the terms and conditions of its Point-To-Point Transmission Service as a result of future compliance filings in Federal Energy Regulatory Commission Docket No. NJ97-3; or

(B) BPA implements Network Contact Demand Service or an equivalent new service under its Open Access

Transmission Tariff that may be used for the transmission of Skagit Treaty Power; or

(C) BPA permits Seattle to schedule Treaty Power transmission under the Skagit FTP Agreement directly with BPA, and BPA permits BC Hydro to schedule Non-Treaty Power transmission under the Skagit PTP Agreement directly with BPA (hereinafter "joint scheduling"), in which case the Parties agree to negotiate any issues which are not covered by the joint scheduling agreement set forth in Appendix B hereto, and any provisions required by BPA which are not already incorporated in Appendix B.

18.2 If a notice of request for renegotiation is submitted by a Party pursuant to Section 18.1, then the Parties agree to negotiate in good faith to amend the affected terms of this Agreement. If such renegotiations are not concluded to the mutual satisfaction of the Parties within 180 days after the date of such notice, or within such other period of time as the parties may agree, then either Party within 30 days after the close of the prescribed period may initiate the dispute resolution procedures specified in Section 10 of this Agreement. Otherwise, the terms of this Agreement will continue in full force and effect.

Section 19. Counterparts

19.1 This Agreement may be executed in several counterparts, each of which is an original, and all of which constitute one and the same instrument. **IN WITNESS WHEREOF**, the Parties, by their duly authorized representatives, have executed this Agreement. This Agreement shall not become effective as to any Party unless and until executed by both Parties.

THE CITY OF SEATTLE, WASHINGTON CITY LIGHT DEPARTMENT

By: /s/ GARY ZARKER
Gary Zarker

Title: Superintendent

Date: January 28, 1999

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

By: /s/ J.G. RODFORD for
Michael Costello

Title: President and CEO

Date: 26 January 1999

EXHIBIT I

BC HYDRO-POWEREX
ASSIGNMENT AGREEMENT

This Assignment Agreement (hereinafter "Agreement") is made effective as of the 1st day of February, 1999 between the British Columbia Hydro and Power Authority, a Crown corporation of the Province of British Columbia (hereinafter "BC Hydro"), and its wholly-owned subsidiary the British Columbia Power Exchange Corporation (hereinafter "Powerex"), as follows:

WHEREAS, the City of Seattle, a municipal corporation of the State of Washington of the United States of America, acting through its City Light Department (hereinafter "Seattle") and the Government of British Columbia (hereinafter the "Province") entered into an agreement dated March 30, 1984, providing for, among other things, the supply of power from the Province to Seattle under the Skagit Treaty for the period January 1, 1986, through January 1, 2066, unless earlier terminated by certain events (hereinafter the "Skagit Agreement"); and

WHEREAS, the Province and BC Hydro entered into an agreement dated December 3, 1985, providing for the assignment and transfer of certain benefits and obligations of the Province to BC Hydro in certain matters relating to this agreement; and

WHEREAS, on November 10, 1987, Seattle and the Bonneville Power Administration (hereinafter "BPA") entered into Transmission Contract No. DE-MS79-86BP92047, (hereinafter the "IR Transmission Contract"), which provided for the transmission of the amount of power to be made available from the Province to Seattle pursuant to the Skagit Agreement and for the provision of power to compensate for losses associated with the wheeling of such power; and

WHEREAS, on November 21, 1996, BC Hydro and Seattle entered into a Temporary Agreement for transmission of Skagit Treaty Power, which agreement was subsequently amended on June 12, 1997, and further amended on December 19, 1997 (hereinafter the "Temporary Agreement"); and

WHEREAS, on December 11, 1997 BC Hydro and Seattle entered into an Agreement in Principle for the Wheeling of Skagit Treaty Power and agreed to negotiate in good faith definitive agreements incorporating such principles, and to diligently seek to negotiate any related agreements with BPA; and

WHEREAS, BC Hydro and Seattle have determined to replace the IR Transmission Contract and the Temporary Agreement with Point-To-Point Transmission Service under BPA's Open Access Transmission Tariff and certain other arrangements, all as further specified in the Agreement for the Transmission of Skagit Treaty Power Between British Columbia Hydro and Power Authority and the City of Seattle (hereinafter "Skagit Transmission Agreement") to be effective February 1, 1999; and

WHEREAS, Seattle is executing a Point-To-Point Service Agreement under BPA's Open Access Transmission Tariff that supersedes and replaces the IR Transmission Contract effective at 2400 hours on February 1, 1999 and extends until 2400 hours on December 31, 2005 (hereinafter the "Skagit PTP Agreement"); and

WHEREAS, Powerex executed a Replacement Power Agreement with BPA, effective February 1, 1999; and

WHEREAS, BC Hydro now desires to assign its rights and obligations, and to delegate its operating responsibilities, under the Skagit PTP Agreement and Skagit Transmission Agreement to Powerex, and Powerex is willing to accept such assignment and delegation;

NOW, THEREFORE, BC Hydro and Powerex (hereinafter "the Parties") agree as follows:

Section 1. Term of Assignment and Delegation.

1.1 This Agreement shall become effective at 2400 hours on February 1, 1999. The assignment and delegation provided in this Agreement shall continue in effect until the earlier of: (a) 2400 hours on December 31, 2005; (b) the date of termination of the Skagit PTP Agreement; (c) the date of termination of the Skagit Transmission Agreement; (d) mutual agreement by BC Hydro and Powerex to terminate this Agreement, or (e) a minimum of 30 days prior notice given by BC Hydro to terminate this Agreement in the event that Powerex is no longer a wholly owned subsidiary of BC Hydro.

Section 2. Scope of Assignment and Delegation.

2.1 BC Hydro hereby assigns its rights and obligations under the Skagit PTP Agreement and the Skagit Transmission Agreement to Powerex to the extent permitted by such agreements. Powerex accepts such assignment subject to the conditions and limitations contained in such agreements.

2.2 BC Hydro hereby delegates its operating responsibilities with respect to transmission arrangements under the Skagit PTP Agreement and the Skagit Transmission Agreement to Powerex to the extent permitted by such agreements, including responsibilities for:

(A) Communications with Seattle and BPA;

(B) Scheduling;

(C) Delivery arrangements;

(D) Furnishing tagging information provided by BC Hydro to Seattle;

(E) Making payments to BPA and other transmission providers;

(F) Arranging for ancillary services;

(G) Loss compensation;

(H) Reassignments of transmission capacity to third parties;

(I) Administration of the Replacement Power Agreement;

(J) Dispute resolution; and

(K) Audits.

Powerex accepts such delegation subject to the conditions and limitations contained in such agreements.

2.3 Nothing herein shall limit or otherwise affect BC Hydro's obligations to make power available to Seattle pursuant to the Skagit Agreement.

2.4 The Parties shall develop internal accounting procedures to reflect their respective financial obligations under this Agreement, the Skagit PTP Agreement, the Skagit Transmission Agreement and the Skagit Agreement.

Section 3. Governing Law

3.1 This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the Province of British Columbia.

Section 4. Entirety

4.1 This Agreement constitutes the entire agreement between the Parties with respect to the matters set forth herein. No amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

Section 5. Severability

5.1 Except as otherwise provided herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties will not otherwise affect the lawful obligations that arise under this Agreement.

Section 6. No Third Party Beneficiaries

6.1 Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action or right of any kind, it being the in-

tent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

Section 7. Non-Waiver

7.1 No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

Section 8. Counterparts

8.1 This Agreement may be executed in several counterparts, each of which is an original, and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement. This Agreement shall not become effective as to any Party unless and until executed by both Parties.

THE BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
By: /s/ J.G. Redford for M. Costello
Title: President/CEO
Date: Jan. 27/99

THE BRITISH COLUMBIA POWER EXCHANGE CORPORATION
By: /s/ [Illegible]
Title: VP-Sales
Date: Jan. 26/99

[Counsel name/address block omitted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding Special Title (Rule 1550(b))	Nos. CV 02-0990-JM(LAB) CV 02-1000-L(JAH) CV 02-1001-B(POR)

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

This Document relates To:

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

Duke Energy Trading and Marketing, LLC, et al. v.
Arizona Public Service Company, et al.

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

POWEREX CORP.'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CROSS-DEFENDANT POWEREX CORP.'S RESPONSE TO PLAINTIFFS' MOTION TO STRIKE AND/OR SEVER CROSS-COMPLAINTS

Cross-defendant Powerex Corp. ("Powerex"), by and through its attorneys, hereby requests the Court to take judicial notice of the documents attached to this request pursuant to Federal Rule of Evidence 201. It is proper for the court to consider matters subject to judicial notice pursuant to Federal Rule of Evidence 201.[1]

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[1] *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988).

Powerex also requests that the Court take Judicial Notice of the following legislative enactments and historical documents and treaties:[3]

* * * * *

12. British Columbia Legislative Assembly, Debates (June 27, 1988), pages 5409-5459.

* * * * *

Dated: August 9, 2002

[Signature/address block omitted]

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[3] *See, e.g., Fox and Assoc., Inc. v. M/V Hanjin Yokohama*, 977 F.Supp. 1022, 1029 (C.D.Cal. 1997) (taking judicial notice of legislative enactment by foreign government); *Menominee Indian Tribe of Wisconsin v. Thompson*, 161 F.3d 449, 456 (7th Cir. 1998) (judicial notice of historical documents, including treaties, is proper).

EXHIBIT 12

PROVINCE OF BRITISH COLUMBIA

2nd Session, 34th Parliament

OFFICIAL REPORT OF

DEBATES OF THE LEGISLATIVE ASSEMBLY

(HANSARD)

Monday, June 27, 1988

Afternoon Sitting

Volume 10, Number 16

THE HONOURABLE J. D. REYNOLDS, SPEAKER

[Page 5408]

* * * * *

UTILITIES COMMISSION AMENDMENT ACT, 1988

HON. MR. DAVIS: * * *

[Page 5409]

* * * * *

The minister has stated that the government is going to create a monopoly power export company, probably a subsidiary of B.C. Hydro. At first blush I agree with that. It's the one-window approach. It means that Hydro, which has the marketing expertise, will in fact buy and sell all power in British Columbia, whether domestically or through the export agency. The problem is that I can see potentially the worst of all worlds with this bill: that is, government intervention essentially to subsidize power exports. The minister has stated in the past that he's concerned about that, but I see nothing in the bill that really comes to grips with that problem.

* * * * *

What I see happening with this new one-window approach and this bill is Hydro buying that power at 10 cents or whatever a kilowatt hour and feeding it in to its average cost – that would raise our average cost marginally from, say, 3.5 cents to 3.6 cents – and then selling it to the United States at 7 cents and claiming a profit. The minister knows that would be a hidden subsidy from British Columbia for export, because instead of using marginal cost and selling it, trying to be competitive at the margin and allowing that to be exported, there would be tremendous pressure to blend the price and sell it at average cost. I would have a great deal of concern about that, and I know that the minister has in the past talked about some concern with that.

What I see happening with energy policy in British Columbia, . . . because Hydro will now be buying all private

power and then selling essentially through the subsidiary [Page 5410] or otherwise to the United States, and the power is then backed up by the entire B.C. Hydro system, Hydro will be costing that power not at the margin, but at average cost. What that means – and this is what I'm completely opposed to – is that it would be a subsidy by domestic consumers essentially for air conditioners in California, to be a bit glib about it. With this bill, with power export companies and with B.C. Hydro's initiatives, I can see quite a significant increase of private power generation coming onstream if Hydro buys that power and then blends it with the cheap Hydro electricity that we have today. I don't want that to happen. I think there's some real problems with that. I fear there will be tremendous political pressure to do that.

In the United States, where they have promoted co-generation and private power, alternative sources of power, they've had some problems. In California, for example, the California energy commission required the utilities to buy all co-generated power. Subsequently they paid extremely high prices for that power, but then blended it in and made it an average price. It has caused a great deal of economic inefficiency in California.

I think there is a tremendous potential in British Columbia for co-generation, but if the government is going to pay fully avoided or marginal costs for that power, that will generate a lot of activity in the private sector. If it's trying to wield that power in the United States, I don't think it will be competitive in the California market, at least at this point, unless it's blended with our cheap hydroelectricity. That's why I think this bill, although it has many things to commend it, also paves the way for, not an explosion, but a significant degree of private sector power just for export, using essentially a hidden subsidy through the public sector hydroelectric dams. That's where I have a great deal of concern, and I can see that coming in terms of where the policy is moving.

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[Page 5411]

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HON. MR. DAVIS: First, I would like to address a concern expressed by the member from Vancouver East about the export of electricity. British Columbia to date has never exported electricity on a long-term basis. It has for several decades exported surplus capacity when there was a market in the United States, or indeed when B.C. Hydro and before it B.C. Electric has a surplus. There are occasions when the Americans don't need any power at all, but in recent years they've taken modest amounts in some years and very large amounts in others.

An argument has been made for always having some excess capacity in British Columbia because the excess or the surplus could be sold on a short-term basis if our own needs didn't rise as rapidly as had been forecast. It's been more a fail-safe system of selling short term. There's been a lot of talk, particularly in the last decade, of long-term sales in the United States. The opportunity still hasn't really arisen for long-term sales to be made. It will arise, I am reasonably confident, in the 1990s or certainly after the year 2000.

Unlike the situation in eastern Canada and in the Midwest, the price of electricity immediately south of British Columbia has in general been less than the average price in British Columbia. It's very difficult to export into an area where the price is less than your average cost. Those circumstances are changing; average cost in the U.S. Pacific Northwest today is roughly comparable, roughly equal to B.C. Hydro's average cost and is rising rapidly. If ever they begin to pay off the cost of incomplete nuclear power plants in the northwest, the rates in the U.S. will be well above ours, and then the opportunity genuinely does exist, at least on a price basis.

Naturally, utilities in the United States build their own capacity if they can, so there's not necessarily a market in California. Generally speaking, new power plants use oil or natural gas. The nuclear alternative now seems to have been precluded. Power from those sources is more expensive, certainly, than average costs in Canada. So long-term, there should be an opportunity to export.

The export opportunity, I think, however, should be as much as possible separated from the service to British Columbians. The service in B.C. – largely provided by B.C. Hydro, but also to a lesser extent by West Kootenay Power and others – is a monopoly-type service and must be regulated, and rates, generally speaking, are equal to average cost. In no way should we include in average costs new plants, which may be more expensive, particularly if they are built substantially to serve an export market. An export agency, I think, is desirable. It will begin its life this summer as a subsidiary of B.C. Hydro, simply because Hydro has the personnel and the expertise to do that kind of work without adding unduly to personnel.

In the longer term, I think that agency should not be seen as a child or a part of Hydro. It should deal with long-term export opportunities. The reason for creating an agency – a single marketing desk, if I can describe it that way – is merely to drive a good bargain in the U.S.A. and not have competing B.C. or Canadian projects vying with each other on the U.S. side of the line. We sell from strength, in other words.

That agency would first have to have obtained firm markets of firm contractual commitment to an income flow, and then would turn around and call for tenders in British Columbia. There will be a variety of expressions of interest. I suppose the majority would be private. It's conceivable that Hydro itself might put forward a project which is seen to be surplus for at least several decades to B.C.'s own needs but is put forward as a non-regulated

project – certainly not regulated in its service to British Columbians, but simply a project which can make a profit.

This single-desk agency would have to see a larger income from sales than the costs on the Canadian side. In other words, that operation would have to be profitable.

MR. CLARK: The margin cost?

HON. MR. DAVIS: There would have to be a distinct difference between the income side and the cost side. There would have to be a margin which was the profit from the export sale, and the totality of that operation would be external to any regulated service to British Columbians.

* * * * *

[Counsel name/address blocks omitted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding
Special Title (Rule 1550(b))

Nos. CV 02-0990-RHW
CV 02-1000-RHW
CV 02-1001-RHW

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

This Document relates to:

ALL ACTIONS

RELIANT ENERGY SERVICES, INC., ET AL.,
Defendants and Cross-Complainants,

v.

ARIZONA ELECTRIC POWER COOPERATIVE, INC., ET AL.,
Cross-Defendants.

DEFENDANTS' JOINT NOTICE OF LODGMENT IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION TO REMAND AND MOTION TO STRIKE AND/OR SEVER CROSS-COMPLAINTS

TO ALL PARTIES, THEIR COUNSEL OF RECORD, AND TO THE HONORABLE COURT:

PLEASE TAKE NOTICE that defendants hereby jointly lodge the following exhibits referenced in the their [*sic*] Opposition to Plaintiff's Motion to Remand and Motion to Strike and/or Sever Cross-Complaints.

Exhibit	Title
	* * * * *
29	BC Hydro's *Report on Electricity Trade*, dated June 30, 2000.
	* * * * *

DATED: August 12, 2002

[Signature/address block omitted]

EXHIBIT 29

BC hydro THE POWER IS YOURS

REPORT ON EXPORT TRADE

30 June 2000

1. The Structure of Agreements between BC Hydro and Powerex

(i) Consolidation of Powerex's revenues for revenue requirements purposes

Under Special Direction No. 8 as amended by an Order in Council dated March 30, 2000, the Commission is required to ensure electricity rates are sufficient to allow BC Hydro to achieve an annual rate of return on equity equal to the return allowed, on a pre-income tax basis, by the most comparable investor-owned utility regulated under the Utilities Commission Act.

Special Direction No. 8 requires that for rate setting purposes, the return on equity must be calculated using consolidated net income from all sources. For this purpose, projections of consolidated net income must include "an amount of electricity trade income consistent with the Commission's forecast of annual net export revenue under average water conditions, as contained in the Commission's report to the Lieutenant Governor in Council dated June 30, 1992, as amended on BC Hydro's Energy Removal Certificate application". Where projected consolidated net income, before any Rate Stabilization Account transfers, is less than the amount needed by BC Hydro to achieve its allowed rate of return, projections are also to

include an allowance for an appropriate transfer from the Rate Stabilization Account. Transfers from the Rate Stabilization Account are subject to a positive balance existing in the account.

BC Hydro uses Generally Accepted Accounting Principles (GAAP) to consolidate its subsidiaries, including Powerex. Under GAAP, subsidiaries are consolidated with their parent company on a line by line basis and any inter-company profit is eliminated on consolidation. The result shows consolidated net income resulting solely from transactions with external third parties. The transfer pricing applied between BC Hydro and Powerex thus has no relevance in determining BC Hydro's rates at this time.

Since consolidated net income is used for rate setting purposes, the optimization of electricity trade income benefits domestic ratepayers by reducing the portion of the revenue requirement that must be collected through domestic rates. Moreover, where water conditions and electricity trade activities lead to an overearning relative to the allowed return on equity, ratepayers benefit from this through the Rate Stabilization Account as described in more detail below.

(ii) Nature of Transactions with respect to electricity trade between BC Hydro and Powerex

BC Hydro's primary objective is to provide low-cost, reliable electricity supply to domestic customers. Within this context, Powerex's activities are designed to support optimal economic utilization of BC Hydro's electricity assets by using non-committed generation capability to earn income.

Powerex deals with BC Hydro as both a transmission user and to assist in optimizing utilization of system capability. With respect to arrangements

for wholesale transmission service, both for itself and for the Power Supply business unit ("Power Supply") within BC Hydro, Powerex deals with BC Hydro's grid operations personnel as it would a third party. Pursuant to the WTS tariff provisions, grid operations has adopted strict codes of conduct and procedures to ensure that Powerex and Power Supply and BC Hydro's customer services business units are treated as third parties.

On the other hand, when it comes to the optimization of the generation assets, Powerex's relationship with Power Supply is intended to be very close. Indeed a conscious effort is made by Powerex and Power Supply to share information and co-operate closely to ensure maximum efficiency and profitability in BC Hydro's operation of its system. Because Powerex is a separate legal entity, the extra-provincial regulatory and income tax implications of Powerex's external activities can be managed for the benefit of BC Hydro as a whole. In addition, this framework has allowed Powerex to develop a trading group that can focus on mastering the rules and characteristics of markets external to B.C.

While energy transfers between BC Hydro and Powerex are accounted for as transactions between separate legal entities, various communication and coordination processes ensure that transactions are beneficial from a corporate-wide perspective. Similarly, BC Hydro's commodity risk management policies and processes are integrated to ensure that the generation assets are used to ensure both adequate supply to domestic customers and optimum use of system capability.

Energy transactions between BC Hydro and Powerex are solely sales and purchases of energy. Powerex has no storage rights or water inventory.

These energy transactions result from BC Hydro's desire to maximize energy generation when its value is high and to minimize energy generation when its value is low. This means ensuring there is sufficient energy and capacity to meet BC Hydro domestic load and optimizing BC Hydro generation for trade, subject to physical and environmental constraints and considering the long-term value of energy in the reservoirs.

In order to maximize value and manage risks, Powerex allocates sales and purchases along three dimensions – geographic, time and market channels. There are three significant markets in which Powerex transacts: Alberta, the U.S. Pacific Northwest and California. The decisions with respect to buying and selling energy in each region are based on the actual and expected market prices and demand for energy in each market, cost and availability of transmission to reach each market, and the risk of transmission curtailments.

Time allocation means allocating sales and purchases among the Real Time market, the next-day market, and the forward market. These allocation decisions are based on the actual and expected market prices and demand for energy, and risk-adjusted forecasts of the BC Hydro generating capability and transmission that will be available in each time period. Because the forward market prices can be quite volatile and because of the nature of BC Hydro's system, Powerex can take advantage of this volatility in its forward sales and purchases. A key factor affecting the time allocation decisions is that, because of limited liquidity, no one market can absorb all the power available to sell.

Allocating among different market channels means selecting the best markets to transact in for a par-

ticular geographic area and time period. For example, in the day-ahead market at the California-Oregon border (COB), Powerex can transact in both the bilateral market with other utilities or marketers, or in the California Power Exchange's (Cal PX) day-ahead market. In the hourly market, Powerex can transact in the bilateral market, the Cal PX hour-ahead market, or the California Independent System Operator (Cal ISO) imbalance energy market. Another alternative is the market for structured or complex deals, which include value-added customer benefits that yield higher margins for Powerex than straight commodity sales. Such benefits include delivery to a customer's site, or re-marketing rights in the event that a customer's load unexpectedly drops. Powerex makes these decisions based on the expected price and demand for energy in the different markets within limits established in BC Hydro's risk management policy described below.

Powerex and Power Supply work together in a process that is both cooperative and iterative. Power Supply determines the net capability of the BC Hydro system to deliver and/or receive power at the B.C. border ranging from real-time to several years forward. Power Supply also establishes the system marginal value of generation (which is influenced primarily by the forecast forward electricity and gas market prices as well as probability of spill and efficiency of water use). Powerex seeks to buy below and sell above this value so as to maximize the net revenue from electricity trade. Information provided by Powerex on forecast market price, market depth, and expected transmission capabilities is important to Power Supply in the determination of this system marginal value. Detailed forecast reservoir energy storage data and

the marginal value of generation are commercially sensitive information.

Information about BC Hydro's generating capability and value drives Powerex's trading strategy. Information about market opportunities is considered in BC Hydro's plant operating decisions and the scheduling of maintenance. Power Supply and Powerex share information continuously for the purpose of optimizing trading on a Real Time or hour-to-hour basis, over the period including the next day and month, and for the period from one month to two years. Information is shared for longer-term opportunities as these opportunities arise.

(a) Real Time

Hour-to-hour coordination takes place between the BC Hydro operations shift engineer and the Powerex Real Time trader, who work in close proximity to one another on the Powerex trade floor. The Powerex trader identifies market opportunities to buy or sell power. The BC Hydro operations shift engineer determines the amount of generating capability that is available for trade after BC Hydro's power and non-power obligations have been met, and the value of this generation. Based on this information, the Powerex trader will make buy or sell decisions for the next hour.

(b) Short Term

The Power Supply next-day operations planners seek input from the Powerex traders on expectations of market prices and quantities for imports and exports and then provides a system capability for sales and purchases from the BC Hydro system. In determining system capability, priority is always given to serving do-

mestic load. The Powerex trader uses this information to engage in purchases and sales and the BC Hydro operations planners use the information to plan short-term maintenance outages. If, for example, market prices are expected to be high, BC Hydro could accelerate, re-schedule or cancel a generation maintenance outage.

(c) Medium Term

For the next day to three-year period, Powerex provides BC Hydro generation and operations planners with forward market prices and expectations of market demand. BC Hydro generation and operations planners provide Powerex with the value of energy in the BC Hydro system and the amount of generation capability that is available each month for trade. These are based on forecasts of the availability of hydroelectric and thermal energy in the system, BC Hydro's load, and the generation outage schedule.

(d) Long Term

All energy transactions of a duration in excess of three years require the specific approval of the Risk Management Committee and/or the BC Hydro and Powerex Boards. Powerex relies on Power Supply to advise on and review any long-term contracts contemplated by Powerex. Contracts with terms over five years also require separate provincial government and National Energy Board approval under the terms of trading authorizations issued to BC Hydro and Powerex.

Power Supply relies on Powerex to advise on and review any long-term contracts contemplated by Power Supply. In addition, Power

Supply and Powerex work together to execute such contracts. An example of such a long-term Power Supply contract is the Non-Treaty Storage Agreement.

The preceding paragraphs refer to system trading; this trading is enabled by or is an important adjunct to, the BC Hydro generation system. In addition to this activity, Powerex engages in a very limited amount of forward hub trading and locational arbitrage. Forward hub trading means buying or selling forward physical blocks of energy, or options on blocks of energy, with a view to profit from changes in prices. Locational arbitrage means buying energy at one point, buying transmission to another point, and selling energy for a profit. These activities are independent of the BC Hydro system but provide valuable market knowledge and price discovery information.

(iii) Policies, agreements and protocols between BC Hydro and Powerex

The activities between BC Hydro and Powerex are subject to a management framework of governing principles, policies, agreements, and working protocols. The primary components of the framework are:

- BC Hydro Commodity Risk Management Policy – with respect to Powerex
- BC Hydro/Powerex Energy Transfer Pricing

(a) BC Hydro Commodity Risk Management Framework

In early 1997, BC Hydro engaged the consulting firm Deloitte & Touche as part of a two-year project to enhance its risk management capability. The objective of the project was to meet or exceed industry best practices for risk

management. The work of the consultants, with significant contributions from BC Hydro and Powerex staff, culminated in the creation of the BC Hydro Commodity Risk Management Policy – with respect to Powerex ("the Policy") and related infrastructure. The Policy was approved by the BC Hydro Risk Management Committee (RMC) in the fall of 1999. The Policy was approved by the Powerex Board of Directors and by the BC Hydro Board of Directors in December 1999. The Policy has now been implemented within BC Hydro and Powerex.

The Policy has also been reviewed and endorsed by government. In June 2000, BC Hydro and Powerex were designated as government bodies that have been approved to trade in commodity derivatives pursuant to section 79.3 of the *Financial Administration Act*.

* * * * *

[Counsel name/address block omitted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding
Special Title (Rule 1550(b))

Nos. CV 02-0990-RHW
CV 02-1000-RHW
CV 02-1001-RHW

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

This Document relates To:

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

Duke Energy Trading and Marketing, LLC, et al. v.
Arizona Public Service Company, et al.

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

DECLARATION OF VALERIE LAMBERT IN SUPPORT OF BRITISH COLUMBIA HYDRO AND POWER AUTHORITY'S MOTION TO DISMISS

I, Valerie Lambert, declare as follows:

1. I have personal knowledge of the facts contained in this Declaration, except for those matters stated on information and belief, as to which I believe them to be true. If called as a witness, I could and would competently testify to all of the facts stated herein.

2. I am Treasurer of British Columbia Hydro and Power Authority ("BC Hydro").

3. BC Hydro acts as the treasury for Powerex and facilitates the issuance of letters of credit in support of Powerex's commercial arrangements.

4. BC Hydro's borrowings and other fiscal arrangements are provided through, and therefore supported by, the Provincial Government. As a result, BC Hydro maintains a credit rating equal to that of the Province. Powerex's commercial arrangements, in turn, are frequently supported by a guarantee from BC Hydro, thus providing Powerex the benefit of BC Hydro's credit rating, which in turn reflects the Provincial Government's guarantee of BC Hydro's debt.

5. Consistent with the requirements of Canadian generally-accepted accounting principles, the financial statements of BC Hydro include all of the revenues and costs associated with the operations of its wholly-owned subsidiaries, including Powerex, subject to normal intercompany eliminations on consolidation.

6. Powerex's earnings are consolidated with those of BC Hydro for purposes of establishing BC Hydro's rates. In determining the rates BC Hydro may charge its customers, the BC Utilities Commission takes into account the contribution anticipated from Powerex due to its export earnings, and reduces BC Hydro's rates accordingly. The benefits of Powerex's export trade activity are passed through to the Provincial Government through the consolidation of Powerex's earnings into the net income of BC Hydro and the requirement that, whenever its debt equity ratio would not drop below certain specified levels, BC Hydro pay approximately 85% of its consolidated net income to the BC Government annually.

7. Dividends from the operations of BC Hydro are payable only to the Province. BC Hydro does not pay Canadian federal or Provincial income taxes.

8. BC Hydro conducts no business in California.

9. To the best of my information and belief, BC Hydro has never had offices in the United States, does not maintain possession of any records or documents in the United States, and does not have any employees in the United States.

10. To the best of my information and belief, BC Hydro has never designated an agent for service of process in the United States.

11. To the best of my information and belief, BC Hydro has never availed itself of courts in the State of California, and has never sought relief from courts located within the State of California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I executed this Declaration on the 22nd day of August 2002, at Vancouver, British Columbia.

/s/ VALERIE LAMBERT
VALERIE LAMBERT

[Counsel name/address block omitted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding
Special Title (Rule 1550(b))

Nos. CV 02-0990-JM(LAB)
CV 02-1000-L(JAH)
CV 02-1001-B(POR)

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

This Document relates To:

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

Duke Energy Trading and Marketing, LLC, et al. v.
Arizona Public Service Company, et al.

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

DEFENDANTS' SUPPLEMENTAL JOINT NOTICE OF LODGMENT IN SUPPORT OF SUPPLEMENTAL OPPOSITION TO PLAINTIFFS' MOTION TO REMAND AND MOTION TO STRIKE AND/OR SEVER CROSS-COMPLAINTS

TO ALL PARTIES, THEIR COUNSEL OF RECORD, AND TO THE HONORABLE COURT:

PLEASE TAKE NOTICE that defendants hereby jointly lodge the following exhibits referenced in the their [*sic*] Supplemental Opposition to Plaintiff's Motion to Remand and Motion to Strike and/or Sever Cross-Complaints.

Exhibit	Title
	* * * * *
3	Deposition transcript of Valerie C. Lambert, dated August 27, 2002
4	Deposition transcript of Kenneth Grant Peterson (Volume 1, pages 1-113), dated August 21, 2002
5	Deposition transcript of Kenneth Grant Peterson (Volume 2, pages 114-197), dated August 22, 2002
	* * * * *

DATED: September 4, 2002

[Signature/address block omitted]

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding — No. CV 02-0990-RHW
Special Title (Rule 1550(b))

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

This Document relates to:

ALL ACTIONS

DEPOSITION OF VALERIE C. LAMBERT

Tuesday, August 27. 2002

* * * * *

[3]

* * * * *

VALERIE C. LAMBERT

called as a witness by the Defendants, who, having been first duly sworn, was examined and testified as follows:

* * * * *

[8]

* * * * *

Q. The Risk Management Committee is a committee of BC Hydro though, right?

A. It's a committee of BC Hydro executives and Powerex.

Q. But to which company does it belong?

A. It's actually a committee of what they call the Chairs Committee of BC Hydro. And that's actually a recent organizational change within BC Hydro. We've [9] gone to a line-of-business structure, and there's representation from the lines of business. And the Chairs Committee actually oversees the RMC, and the CEO of Powerex is on the Chairs Committee, so it's a subcommittee of that.

Q. Of the Chairs Committee.

A. That's right, um-hm.

* * * * *

[25]

* * * * *

Q. As I understand it, the treasury group at [26] BC Hydro performs a treasury function for Powerex; is that right?

* * * * *

A. Certainly Powerex – in that Powerex does not have departments that cover off certain functions, they've got various arrangements with BC Hydro to provide those services for a fee. So there are examples of those throughout – for example, legal services from time to time they may avail themselves of, or system support, or treasury, as we've said; and in other administrative areas they will utilize BC Hydro's resources. And that, of course, will be compensated at market rates.

Q. And then that compensation is netted out when the financial statements of the two companies are consolidated?

A. Yes. I mean, Powerex's – I mean, clearly those would be costs in Powerex's financial statements, but once they are consolidated, intercompany transactions would be eliminated, yes.

Q. You mentioned treasury and legal and systems. Are there other areas where BC Hydro performs administrative functions for Powerex?

[27] A. There's – they conduct the accounts payable service on behalf of Powerex, and also I believe they produce payroll.

Q. I thought that I was quoting your declaration earlier and I actually wasn't, so just turn back – could you look at paragraph 3 of your declaration, which I believe is Exhibit 2.

What you actually said there was:

"BC Hydro acts as the treasury for Powerex . . ."

Could you explain what you meant by that?

A. Well, in that BC Hydro performs treasury activities for Powerex because they don't have a designated treasury department of their own.

Q. And what are treasury activities?

A. Things like cash management, for example, is probably the most significant one.

Q. Can you describe for us what you mean by cash management?

A. Powerex, as do the other subsidiaries of BC Hydro, retains its own bank accounts. And we utilize a centralized cash-management system within BC Hydro and its subsidiaries. So the – what that does is actually creates efficiencies between the bank balances, for example, overnight.

[28] If one company were in overdraft and another company had a positive balance, the bank basically performs a mechanical process each night to make sure that they don't charge excessive interest to the group of companies as a whole.

So we're quite active in managing that process.

Q. Do you use sweep accounts?

A. No, no.

Q. So rather than using sweep accounts, the bank looks at the balances in the accounts of the various subsidiaries of BC Hydro and BC Hydro itself?

A. That's right, that's right.

Q. And it won't charge whatever fees might be associated with overdraft if there is money to cover in other accounts?

A. That's right. At the concentration level it would actually net those out.

Now, in that there is no sweep, an overdraft, for example, that existed overnight for one of the subsidiaries would attract the appropriate cost, and that would be allocated, again, as part of that overall management system.

Q. When you said "attract the appropriate cost," you meant there would be an intercompany cost –

A. For example, overdraft interest, that's right.

[29] Q. So Powerex has its own bank accounts.

A. Yes, that's right.

Q. But people within the treasury at BC Hydro manage the accounts for them, for Powerex?

A. I don't view it as managing Powerex's accounts per se. We don't have targets with regard to Powerex's bank accounts. What we do is, again, just create as much efficiency in a consolidated sense as we possibly can.

But Powerex – they write their own checks, they prepare their own wires, they are quite independent in that sense.

Q. But they don't do their own payroll, Powerex doesn't.

A. Well, again, Hydro provides a service. But it's the same as an external service would be in that payroll isn't second-guessing Powerex or questioning whether or not that's appropriate or that type of thing. They're not directing the process at all, they're simply providing a service center-type function.

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[30]

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Q. . . . The money that Powerex makes gets to BC Hydro at some point in the course of the year, right?

A. Not necessarily.

Q. How does it work?

A. The consolidation is an accounting process, it's not a cash process at all. The only way that retained earnings of Powerex would find their way to BC Hydro would be through the declaration of a dividend that was at the pleasure of the Powerex board of directors.

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[32]

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Q. In order to engage in its trading activities, does Powerex use credit support from BC Hydro?

A. Yes, it does.

Q. And does the treasury group at BC Hydro manage that credit support?

A. We certainly facilitate the granting of credit support.

Q. BC Hydro issues guarantees on behalf of Powerex; is that correct?

A. That's correct.

[33] Q. And it also, if I use the language correctly, facilitates the issuance of letters of credit for Powerex; is that correct?

A. That is also correct.

Q. Are there any other ways in which BC Hydro provides credit support for Powerex?

A. No.

Q. Okay. Let's start with guarantees, then.

Who makes the decision about whether to provide a guarantee to a counterparty?

A. The initiator would be Powerex. Typically what would happen is that they have communication that suggests a guarantee is required by a counterparty. So they would bring it to the attention of BC Hydro, and we in treasury would then prepare documentation for the Province that would state the situation and the requirement.

And then the BC Hydro Treasury Department would communicate directly with the Province and a determination would be made that that was an appropriate guarantee to write. And then it would be signed off by appropriate officials both in Hydro and in the Province.

Q. When you said "a determination would be made," who would make the determination?

A. First of all, Powerex would make a [34] recommendation. At various steps, if somebody thought it was a really bad idea, I think that would get communicated broadly.

Hydro – we will look at it in the Treasury Department and determine whether or not it's an appropriate guarantee to issue.

The Province, for their part, would have a similar process. I mean, clearly they're monitoring the amount of guarantees that are issued by the Crown.

And it basically is that type of iterative process. If there was a concern raised at any of those levels, then I think that it would certainly be dealt with.

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[37]

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Q. Can you explain for us how Powerex uses letters of credit?

A. Again, it's a form of credit support issued on behalf of the counterparty. And letters of credit are used much less frequently than guarantees. And, again, that's because of the cost involved. The letter of credit – the actual process itself is very similar to what I've described with respect to the guarantees.

Q. The internal process of whether to issue a letter of credit or not.

A. That's right, that's right.

Q. "Internal" meaning Powerex, BC Hydro, the Province?

A. The Province, that's right.

Q. Unfortunately we don't have a copy of any letters of credit here today. Could you just briefly describe what the letter of credit looks like?

[38] It's issued by the bank; is that right?

A. What there is, the first document is an indemnity. And basically what that does is Powerex and BC Hydro would indemnify the bank. So to the extent that a counterparty forced a draw that the bank had to make good on, the bank would then have the right to go to Powerex for satisfaction and then, in turn, to BC Hydro if that didn't work out.

So it's a different process than the guarantee process by virtue of the involvement of the bank.

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[40]

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Q. Powerex's CFO and BC Hydro's CFO are the same person, correct?

A. That's right.

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[71]

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Q. Did BC Hydro coin the term "risk-management policies"?

A. No, they did not.

Q. Did it coin the term "risk management committee"?

A. No, absolutely not.

Q. Have you heard of such things in other enterprises?

A. Yes.

Q. Does it have a generally accepted meaning?

A. Certainly within the energy industry it's got a fairly generally accepted meaning now.

Q. So other energy companies also have risk-management policies?

A. Yes.

Q. And risk management committees?

[72] A. Yes.

Q. And is that true of both privately- and publicly-held companies?

A. Yes, it is.

Q. Are you aware of other situations where, in the energy industry, the parent company sets risk-management policies for operating subsidiaries?

A. Yes, I am.

Q. Are you aware of other situations where, in the energy situation, a parent company will have a risk management committee which then forces or modifies those policies as to subsidiary operating entities?

A. Yes, I am.

Q. Based on your experience in the industry and your knowledge of BC Hydro's risk-management policies, is there anything about them which you consider particularly unusual as compared to the risk-management policies you're aware of at private energy companies?

* * * * *

[A.] No.

[Q.] Based on your experience in the industry and your experience at BC Hydro, is there anything that you consider particularly unusual about the Risk Management Committee that exists at [73] BC Hydro versus similar committees in private companies?

* * * * *

[A.] No.

[Q.] Based on your experience in the industry and at BC Hydro, is there anything unusual about the functions performed by the Risk Management Committee at BC Hydro versus the risk management committees at private companies?

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[A.] No.

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Q. Are the financial guarantees approved by the Province itself?

A. Yes, they are.

Q. That's the guarantees issued by BC Hydro.

[74] A. That's right.

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EXHIBITS 4 & 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding Special Title (Rule 1550(b))

No. CV 02-0990-RHW

WHOLESALE ELECTRICITY ANTITRUST CASES I & II

This Document relates to:

ALL ACTIONS

DEPOSITION OF KENNETH GRANT PETERSON

Wednesday-Thursday, August 21-22, 2002

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[4]

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KENNETH GRANT PETERSON

called as a witness by the Defendants, who, having been first duly sworn, was examined and testified as follows:

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[11]

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Q. Is it common for Powerex to hire employees from BC Hydro?

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[A.] In the early period of Powerex's existence, Powerex's employees were, in fact, BC Hydro employees.

From 1993 on, all Powerex employees are directly employed by Powerex. From time to time folks have been hired from BC Hydro to join Powerex.

[Q.] Just so I make sure I understand that, so from 1988 to 1993 people who were working for Powerex – which then had a different name – were actually employed by BC Hydro?

A. Correct.

Q. And so their paychecks came from BC Hydro?

A. Yes. And, as a matter of efficiency, they [12] continue to do so. BC Hydro acts as payroll agent for Powerex to this day.

* * * * *

Q. How did the Provincial government create Powerex?

A. There were a series of policy discussions between BC Hydro and the Provincial government over changes in the energy landscape at the time, policy discussions in which I participated.

The genesis of the creation of Powerex was the preparation of a Cabinet submission, in which I was involved, proposing that an export agency of the government be created. And the government directed that be done through BC Hydro by incorporating a subsidiary into the Company Act.

Q. And you were directly involved in these discussions?

A. Yes.

Q. Was it your understanding at the time that despite having been created – despite having been [13] created

through BC Hydro, that Powerex's predecessor was intended as an export agency of the government?

A. Yes, it was an initiative of the government.

Q. And the government directed that it be created through BC Hydro?

A. Correct.

Q. And is it your understanding today that Powerex is intended as an export agency of the government?

A. Yes.

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[18]

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Q. Did the government consider any other vehicles for marketing this power?

A. Yes, it did.

Q. What else did it consider?

A. It considered two alternative marketers, neither of which are in business today. One of them was Enron, and the other was – well, I guess Puget, Duke, Dreyfuss is still in business, but not under that framework.

Q. And are you aware of the reasons that Powerex was chosen?

A. Yes.

Q. Can you tell me what they were?

[19] A. The superior knowledge of the hydroelectric system in British Columbia and the Pacific Northwest, and mastery of all the details of the Treaty. And that was felt to outweigh perhaps some of the commercial advantages that the other competitors might have brought to the table.

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[27]

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Q. Could you explain why Powerex was concerned about political risk?

A. There was a political firestorm created in British Columbia when California stopped paying its bills under Cal ISO and Cal PX tariffs. Power had been [28] delivered out of an energy-short circumstance in BC, and up to $300 million was not forthcoming and remains in California to this day.

Q. And why was Powerex concerned about political risks?

A. Well, Powerex, as a subsidiary of BC Hydro, as an agent of the government, is in the public eye. And the kinds of tensions that can be created publicly by these events can create difficulties for normal course of business.

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Q. Did the political risks to British Columbia [29] affect the prices that Powerex charged CDWR?

A. To the extent that they had to be reflective of our best estimate of the market value, yes. We were being importuned by California to bail them out, and the prevailing sentiment in BC was "only if you can get full value for it."

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[31]

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Q. What was your understanding about what the Provincial government's concern was about the fact that Powerex was selling to California when it was net short?

[32]

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[A.] The concern was two-fold. One was power had been sold without money being received, and we were well into the beginning of what would – what was, even in late fall of 2000, looking like one of the very low water periods in the Pacific Northwest and Canada.

And the Provincial government representatives, because this was a popular story in the press, were continually questioned by their constituents as to why an agency of the Crown was continuing to sell power into California.

[Q.] Were there concerns that Powerex wouldn't be able to purchase enough power back to satisfy British Columbia's citizens' needs?

A. Yes.

Q. And were there concerns about the price at which Powerex would be able to purchase power to satisfy British Columbia's needs?

A. Yes.

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[36]

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[Q.] Mr. Bell is the chair of BC Hydro; is that right?

A. Correct.

Q. And he's also the chair of Powerex?

A. Correct.

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[37]

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Q. Okay. BC Hydro appoints the Powerex board, correct?

A. Not BC Hydro per se. The BC Hydro directors do.

Q. Excuse me. So the BC Hydro board of directors [38] appoints the Powerex board of directors.

A. Correct.

Q. Is there any difference in the way that outside and inside directors are appointed to the Powerex board?

A. Yes. There is one outside director on the Powerex board who is not on the BC Hydro board, and he was appointed at the recommendation of the Powerex board to the Premiere's Office. So it wasn't a direct appointment by the government.

Q. It was not a direct appointment by the government?

A. Not by the government per se. The other directors were, and these directors recommended to the Premiere's Office that Mr. Bob Fairweather be added to the roster of Powerex directors.

Q. So – I'm sorry. So are other outside directors of Powerex appointed by the Premiere's Office?

A. Mr. Fairweather is the only outside director of Powerex that is not also a director of BC Hydro.

Q. Are the – are BC Hydro officers who are on Powerex's board considered inside or outside directors?

A. They would be considered inside directors.

Q. Are there any officers or employees of Powerex that are also officers or employees of BC Hydro?

A. No – well, yes, there is one. Mr. Bob Elton, [39] who is the chief financial officer, who was hired by Powerex in December of 2001, was appointed I believe in March 2002 to the dual role of CFO for Hydro as well as CFO of Powerex.

Q. What's your understanding of what the purpose is of having BC Hydro board members sit on Powerex's board?

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[A.] Well, my understanding is that's the way the government effects its governance responsibilities for BC Hydro and its subsidiaries.

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[42]

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Q. Ms. Watson is the corporate secretary for both Powerex and BC Hydro; is that right?

A. Correct.

Q. And Ms. Lamming is the assistant secretary for both companies?

A. Correct.

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[44]

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Q. Who's Wayne Cousins?

A. He's a corporate communications officer for BC Hydro.

Q. Is he authorized to speak on behalf of Powerex?

A. For – as I mentioned earlier, for matters of convenience, the communications and government relations for the BC Hydro family of companies is handled centrally through Corporate Communications.

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[46]

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Q. For purposes of exports from the Province, does BC Hydro have any other conduit other than Powerex for [47] selling surplus power?

A. No.

Q. And, in fact, the Province requires that BC Hydro export power only through Powerex; is that right?

A. As a matter of policy, yes.

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[54]

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Q. . . . What would BC Hydro do with its surplus power if Powerex didn't exist?

A. BC Hydro, under normal water conditions, does not have surplus power. Occasionally, under extraordinary high inflows, it would have surplus power. If Powerex didn't exist, BC Hydro would sell any surplus it had at the BC-U.S. or BC-Alberta border as it used to before Powerex gained access to U.S. markets.

Q. Can we go back to your declaration, which is [55] Exhibit 2, I believe. Could you look at paragraph 41?

A. Yes.

Q. You say there that:

> "BC Hydro sells all of its surplus electricity to Powerex . . ."

A. Yes.

Q. Could you explain to me – sorry.

Is trading that surplus power one of Powerex's main functions?

A. No.

Q. Because, in fact, there isn't very much surplus power, from what you just said?

A. Correct.

Q. So what is the relationship between Powerex and BC Hydro power?

A. Well, in regard to this particular issue, the Province made investment in hydroelectric facilities going back to the sixties, and transmission facilities to interconnect with neighboring entities.

The nature of a hydroelectric system is that it – particularly one with large, multi-period storage, such as BC Hydro – is that it will have surplus capability from time to time; that is, the generating capacity of the generating stations is available in excess of the needs of the Province at a particular [56] time. But it may not have the fuel available, depending on load and rainfall and so on.

So what Powerex has done, uniquely, compared to what BC Hydro used to do and would do without Powerex, Powerex buys energy in off-peak periods and utilizes that surplus capacity to sell into markets at other times.

So it's the surplus capability based on the investments the Province made that Powerex is now maximizing the value of.

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[Q.] Is that surplus-transmission capable or surplus-transmission capability?

A. Both.

Q. If Powerex were not performing the function you just described, would BC Hydro have to do it for itself?

A. BC Hydro could not.

Q. Could not. Why not?

A. Because it could not submit itself to FERC regulation.

Q. So – so the functions that Powerex is performing for BC Hydro, BC Hydro could not perform for itself?

[57] MR. BUTZ: Well, he characterized it as functions that BC Hydro is performing for the Province.

MS. CREGAN: Q. Excuse me.

A. That BC Hydro could not do for itself.

Q. Or for the Province.

A. Right.

Q. If the Province didn't have the capability through Powerex to maximize the value of that capacity, how would that change the availability and price of electricity in the Province?

* * * * *

[A.] Well, the earnings of Powerex are consolidated through BC Hydro's Consolidated Statement of Earnings and then utilized under direction by the Province primarily for rate stability.

So absent those earnings, BC Hydro would either be seriously under-earning on its investment from domestic customers, or rates would have to go up.

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[67]

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[Q.] Do you recognize this document?

A. Yes.

Q. Can you tell us what it is?

A. It's the affidavit that I signed on behalf of Powerex concerning FERC's investigation into potential manipulation of electric and natural gas prices in the West.

Q. Could you look at paragraph 5, the section on page 5?

A. Yes.

Q. On Subsection C you testified that:

"The drought conditions that prevailed in the Pacific Northwest during 2000 and 2001, and the hydroelectric energy deficit in British Columbia in these years, required Powerex to purchase large amounts of energy from numerous suppliers to replenish BC Hydro's reservoirs."

Could you explain what that means?

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[68]

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[A.] BC Hydro, in a drought condition, will be short of energy to meet its domestic requirements. So any of the sales that we made had to be offset by purchases. And, indeed, during that year we made more purchases than sales in order to ensure that there was sufficient energy in the Province to meet domestic load.

[Q.] And so, in fact, Powerex was required to go out and purchase power on behalf of BC Hydro.

A. Yes.

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[71]

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Q. Does BC Hydro issue guarantees for Powerex with any counterparties?

A. BC Hydro, on behalf of the Province, issues parental guarantees to counterparties. And, as I've mentioned earlier, we've discontinued the use of LCs to a great extent and are replacing them with parental guarantees. But those are authorized by the Province, and BC Hydro provides them to Powerex.

Q. If those guarantees were called upon, would it be the Province's assets that would be called upon to meet the requirements under the guarantee?

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[72] [A.] Well, if the credit guarantees are called on, it would be on primarily the cash flow of Powerex. Ultimately it would impact the Province through consolidation.

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[73]

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Q. Does Powerex have its own credit rating?

A. No.

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[86]

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Q. So anytime that Powerex wants to engage in a trade that is outside the Risk Management Policy parameters, it needs to go to the Risk Management Committee for approval?

A. Correct. The Risk Management Policy sets out the broad framework within which Powerex can transact, including counterparty credit limits. And anything that goes beyond that needs the approval of the RMC and occasionally, depending on the limits, up to the boards of Powerex and BC Hydro.

Q. Does the RMC set individual counterparty credit limits?

A. No. It sets the parameters by which counterparties can be – counterparty credit limits can be established. So a Double A-rated counterparty would be eligible for a certain level, for example.

[87] Q. Could you go to page 8, please.

A. Yes.

Q. Do you see the section on "Reporting on Transactions"?

A. Yes.

Q. Could you tell us about Powerex's reporting obligations to the Risk Management Committee?

A. On a monthly basis routinely there are standard reports issued to the Risk Management Committee showing credit positions, transaction positions and so on; mark [*sic*] to market, credit VAR calculation, a raft of risk-management tool reporting.

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[94]

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Q. Are Powerex and – sorry. Let me start over. Does BC Hydro have a pension plan?

A. Yes.

Q. Is it related to a government pension plan?

A. It's a separate pension plan from the government's plan.

Q. And are Powerex employees part of the BC Hydro [95] pension plan?

A. Yes, they are.

Q. And are they part of BC Hydro's – does BC Hydro have any other retirement plans?

A. No.

Q. Do Powerex employees have the same employee benefits as BC Hydro employees?

A. For the most part, in terms of standard employee benefits.

Q. Such as –

A. Medical, dental.

Q. Are there any limits on Powerex's ability to pay market compensation to its traders?

A. Yes.

Q. What are they?

A. In the broad context of Provincial guidelines on compensation we're under certain constraints. We have a bonus compensation program that's unique. No one else in the public service has anything like it. But that's in order to be competitive.

Q. But other than the bonus compensation plan, there are – are Powerex's employees paid within Provincial guidelines?

A. Not within Provincial guidelines.

Q. I'm sorry. I must have misunderstood what you [96] said before.

A. I said within the context of what could be accepted provincially, you might say. Again, public salaries or public-service salaries can be a political issue. Powerex aims to compensate at the median of the Canadian market for its traders.

Q. So higher compensation could be politically unpalatable?

A. Yes.

Q. And that would be a problem for the Provincial government?

A. Yes.

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[98]

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Q. . . . Do you recall BC Hydro getting a request for power from the California Governor's Office on January 18th?

A. Yes, I do.

Q. And did that request come from the Governor's Office to BC Hydro?

A. Yes.

Q. And that was not the ordinary course of business?

A. No.

Q. I don't want to ask you for a long narrative, but maybe you could just tell us about the initial request and what you know about the initial request from California for power on January 18th, 2001.

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[99]

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[A.] The fact is we had a no-trade policy with California because of the credit issue. And [100] the Risk Management Committee was unwilling to extend any credit. We could make power available on the basis of purchase for resale, but the credit could only come from the Risk Management Committee. And the call, I believe, from the Governor's Office was basically an appeal to free up the credit so that these transactions could take place.

[Q.] Do you recall how long at that point you had had limitations on trading with California because of credit problems?

A. Well, in early December we ceased selling into the Cal ISO. We continued into the PX for a time.

And there were a variety of creative instruments during that period to try to get credit support for transactions into California, including Edison sending us cash, I believe in – I don't remember exactly the dates.

But the California Department of Water Resources got a letter of credit for a short period and then decided that they didn't have the authority to do that. So it was a "schmozzle" as they say – I don't know how you spell that, Madam Reporter, but – and so this high level appeal came in to try to get some mechanism in place so that these transactions could occur.

[101] Q. And who was involved in any discussions that took place about whether those transactions could occur?

A. The chairman of BC Hydro as kind of the senior political representative, if you will; the CEO of BC Hydro, and the chair of the Risk Management Committee, and other members of the Risk Management Committee.

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[102]

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Q. So as a result of discussions among – and you'll correct me if I get this wrong – BC Hydro's chair, members of the Risk Management Committee and yourself, was power made available to the CDWR on January 18th?

A. I don't remember specifically what happened on January 18th, but it set in motion the creation of a credit facility that allowed us to continue to trade with CDWR for a number of months.

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[103]

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Q. Would Powerex have been able to enter into that arrangement with CDWR without BC Hydro's approval?

A. No. Again, it's the Risk Management Committee that sets the limits.

Q. Was anyone from the Province involved in any of these discussions about changing the credit limits so you could trade with CDWR – or make power available to CDWR?

A. I believe Mr. Smith contacted the minister's office about this situation because it had the potential to be escalated to an international incident.

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[118]

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Q. How many of Powerex's employees are trader staff?

A. Out of approximately 120 employees, between 50 and 60 would be in the front-office category that would make them eligible for bonuses. Although all employees are treated in the same pool, it's only the front-office staff that have access to the larger bonus.

Q. So all employees are eligible for bonuses.

A. Yes.

Q. And how is the bonus pool calculated?

A. It's through a formula based on earnings in Powerex.

Q. What is that formula?

A. I don't recall just off the top.

[119] Q. Is it a percentage of Powerex's profits?

A. Yes. It funds in a gradual way up to a cap which is set by the board.

Q. So is it a true statement that the greater the profit Powerex makes the higher the percentage of bonus?

A. No. Let's see if I can remember the formula. We have to meet a certain minimum income target before the pool starts to fund. And then the pool funds at 10 cents on the dollar to the bonus pool and 90 cents to the rest of consolidated income. And then there's a cap put on it by the board, and the caps kicks in at a low level.

Q. What was the total bonus pool in fiscal year 2001?

A. Less than 5 million, Canadian.

Q. And fiscal year 2000?

A. Less than 4 million Canadian. These are very approximate numbers.

Q. And 2002?

A. I'm sorry, I think – I would say –

Q. Yeah, I guess I'm confused because you've already issued an Annual Report 2002 –

A. Yes.

Q. – which is for the fiscal year ended in March 2002, so just to be clear –

[120] A. Let's go back. Fiscal year 2002, approximately 4 million. Fiscal year 2001, somewhat less than 5 million. Fiscal year 2000, I believe less than 4 million. These are all in Canadian dollars.

Q. All right. And that's 10 percent of the profits or 10 percent of revenues?

A. It's 10 percent of the net income calculated for Powerex but capped at, as I said, a fairly modest level by the board.

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[126]

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Q. Let's talk about the retirement package. Who administers this retirement plan?

A. It's a trustee on behalf of BC Hydro and Power Authority.

Q. Who's the trustee?

A. I don't know.

Q. Is it administered in the same way as private companies have pension plans?

A. It's a defined pension plan that's probably closer in administration to the way the Province administers its Superannuation Fund.

Q. Are you aware of any other government – strike that.

How does the – how do Canadian government [127] employees or Provincial employees ordinarily get paid their pensions? Can you just describe generally what that system is like?

A. There is a contribution formula that, over time, yields a defined benefit at a certain age. So that an employee makes a contribution, the employer matches – I don't know exactly the formula – but at a certain age and number of years of service, they're eligible for a defined pension benefit based on a percentage of their last five years, I think it is, the calculation of earnings.

Q. Is that similar to our Social Security system, if you're familiar with that?

A. I don't know. I'm not familiar with that.

Q. Does the government guarantee – for those other employees that we're talking about now, does the government guarantee the payment of those benefits, or does it depend on the performance of some funds that have been invested?

A. Which other employees are you speaking of?

Q. We're talking about how it ordinarily works for Provincial or Canadian-government employees.

A. Oh, yes, the government guarantees it.

Q. And for Powerex do those employees receive their retirement benefits if, for example, the company [128] were to go bankrupt?

A. If Powerex were to go bankrupt?

Q. Yes.

A. The accumulated pension benefits would be guaranteed.

Q. By who?

A. By the Province through BC Hydro.

Q. Is there a document which establishes that?

A. I don't know.

Q. Then what's the basis for your statement?

A. Because the Province set up BC Hydro in that form.

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[131]

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Q. And outside directors are also selected by the BC Hydro board with the approval of – what was the name of the minister or –

A. I believe it's the Premiere's Office.

Q. Have they ever refused to approve an outside director selected by the – of Powerex selected by the BC Hydro board?

A. Yes.

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[132]

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Q. What are the different business activities that Powerex does? I mean the whole spectrum: trading, electricity. Anything else besides buying and selling electricity?

A. We buy and sell natural gas.

Q. Anything else?

A. Those are the principal activities.

Q. Any other activities?

A. Countless man-hours spent in regulatory [133] proceedings.

Q. Anything else?

A. Not of a business – not of a direct business nature, I would say.

Q. What – approximately what percentage of Powerex's revenue is attributable to purchases and sales of natural gas as opposed to electricity?

A. Less than 5 percent of natural gas.

Q. Where does Powerex buy its natural gas from?

A. Primarily at the Sumas Trading Hub.

Q. What is that?

A. Sumas is a point on the BC-Washington state border at the intersection of a number of pipelines.

Q. What does Sumas stand for?

A. The name of a town in Washington state.

Q. So –

A. It's not an acronym.

Q. So is this – who makes the market for this gas? With what entity is it traded through?

A. There are many entities trading there. I don't know them all. But West Coast, now owned by Duke, would be one key player there; the BC Gas Company; many U.S. traders.

Q. The Sumas Trading Hub is a physical location or a corporation?

[134] A. It's a physical location.

Q. And that is in the United States.

A. It's on the border. I believe there may be a Sumas, British Columbia as well, but it's a border point.

Q. And are BC Hydro's sales as well as purchases done primarily through Sumas?

A. That's probably the majority of them, but we also trade in other hubs.

Q. What other hubs?

A. Empress in Alberta, so-called Station 2 in Northern BC. A limited amount in the Rockies.

Q. Does BC Hydro provide natural gas to its retail customers?

A. No.

* * * * *

[136]

* * * * *

Q. You spoke yesterday about BC Hydro's mix of – excuse me, Powerex's mix of supply, correct?

A. Yes.

Q. What do you mean by that?

A. Well, as I said yesterday, Powerex acquires a portfolio of supply resources from numerous [137] counterparties. There are a couple of large positions that we have, including the Canadian Entitlement and downstream

benefits, but otherwise most of them tend to be fairly short-term and relatively small.

Q. And of the power that you – "you" meaning Powerex – whenever I say "you" I generally mean Powerex – that you sell, how much is Canadian Entitlement power?

A. Canadian Entitlement power last year, for example, would have been about 15 percent of our total sales.

Q. So it's the largest single source of power, but it's not the majority of the power that you sell –

A. Correct.

Q. – is that correct?

A. Correct.

Q. What is the next largest single source of the power that you sell?

A. I can't think of the – off the top. We have so many different sources of varying quantities and durations that they would be rather modest by comparison.

Q. Do you have any idea of the total number of different sources of power there are that you purchase?

A. Well, we have between 150 and 200 [138] counterparties that we deal with, and we buy and sell from virtually all of them.

Q. How many of those are in the U.S.?

A. The majority would be in the U.S.

Q. So more than 50 percent.

A. Yes.

Q. More than 60 percent?

A. Yes.

Q. More than 70 percent?

A. Probably.

Q. More than 80 percent?

A. I don't think so.

* * * * *

[139]

* * * * *

Q. Who do you regard as your principal competitors?

A. Bonneville Power Administration, American Electric Power, Duke Energy Trading and Marketing, TransAlta Energy Marketing, TransCanada, Pacificorp.

Q. Okay. Any others?

A. And the list goes on.

Q. Of those you just mentioned, aside from the Bonneville Power Administration, which of them are owned by governments, United States or Canadian governments?

A. Of the list that I mentioned, only Bonneville.

* * * * *

[141]

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[Q.] Does Powerex have any immunity from suit, civil lawsuits, in Canada?

A. No.

* * * * *

[147]

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[Q.] Powerex is not a Crown corporation, is it.

A. It's a subsidiary of a Crown corporation.

Q. But Powerex is not itself a Crown corporation, is it.

A. No, it isn't.

Q. Is there anything in this document, this entire Exhibit 18, that you can tell me distinguishes Powerex from any ordinary privately-held Canadian corporation? [148] Point to anything you like.

* * * * *

[A.] Not in this document.

* * * * *

[150] Q. Did BC Hydro solicit proposals from any of those potential marketing entities?

A. No, the Province did.

Q. The Province did solicit proposals.

A. Yes.

Q. From who?

A. From Enron Capital and Trade and from a consortium of Puget, Duke and Louis Dreyfuss.

Q. Did you ever see those proposals?

A. Yes, I did.

Q. Can you describe the terms of any of those proposals?

A. They were very preliminary. Generally the proposal was that they would take title to the power and have some revenue-sharing mechanism with the Province.

Q. Share profits?

A. Yes.

Q. Was the formula they proposed in any respect similar to the formula agreed upon in the assignment agreement, Exhibit 3 to your deposition?

A. No.

* * * * *

[154]

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Q. Why would Powerex ever have a dispute with BC Hydro or the Province about how much money it was supposed to pay them? Why wouldn't it just give them whatever they asked for?

* * * * *

[155]

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[A.] We have a mechanism for determining the value of the power, and there is potentially some dispute over that. We will not pay them whatever they ask, because that might bankrupt us.

* * * * *

Q. Let's go to Section 14.1.. There is a statement in there:

". . . Powerex will not be or be construed as the agent of the Province . . ."

Why did you put that section in there?

* * * * *

[156] A. Well, there is some attorney-client privilege element I believe in this, but in broad strokes, it's to ensure that the Province isn't subject to FERC regulation by the fact of Powerex's market-based sales in the U.S. based on the entitlement.

* * * * *

[165]

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- Q. Does Powerex sell power to BC Hydro at cost or is there some sort of a markup?

A. There's a transfer pricing mechanism.

Q. Can you describe that?

A. It's simply an index-based transfer price.

Q. And which index is used?

A. The Mid-Columbia.

Q. So regardless of the price that Powerex pays for that power, it charges BC Hydro the index price.

A. Yes, and gives BC Hydro an index price when it takes the power out.

* * * * *

[170]

* * * * *

Q. Taking a look at Exhibit 13 of yesterday, at the bottom of the first page under the heading, "The Structure of Agreements Between BC Hydro and Powerex," [171] there's –

A. Is this the letter from the Commission?

Q. Yes, it is, the first document in this exhibit.

A. Yes.

Q. It's a reference to Commission Letter No. L-15-00 which says:

> "... the commission acknowledged that Powerex would not be a public utility if it acts at arm's-length from BC Hydro. The Commission requests comments from the JIESC and CAC (BC) et al. on the relationship between Powerex and BC Hydro and any implications for the Commission's involvement in monitoring the activities of BC Hydro and Powerex."

Did I read that correctly?

A. Yes.

Q. And the next – there's a document – these pages aren't numbered, but there is a letter dated 30 June 2000

to the BC Utilities Commission. Is that the response called for by the quote I just read?

A. Yes, I believe it is. But only in part.

Q. What was the British Columbia Utilities Commission's final conclusion on the issue of whether Powerex was or was not a public utility?

A. The British Columbia Utilities Commission [172] concluded that Powerex was not a public utility.

Q. And what is the definition of a public utility?

A. I will answer in lay terms. It's a utility engaged in service to end-use customers in the Province and regulated for that purpose by the commission.

* * * * *

[174]

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[Q.] Going to Exhibit 6 at page 571.

A. Yes.

Q. In the lower left-hand corner there's a bar chart which is entitled "Payments to the Province." And there are three items reflected in each bar. One of them is "Taxes." And this bar is measured in the hundreds of millions of dollars.

Can you explain for me what taxes are paid to the Provincial government?

A. I believe they're primarily grants in lieu of property taxes. It's – BC Hydro holds many properties around the Province. All property is subject to a property-tax formula, but BC Hydro is not subjected to that tax per se, but, through some accommodation that [175] was made years ago, they pay so-called grant in lieu of property taxes. I believe that's what it is. That's the best of my knowledge.

* * * * *

[177] [Q.] Showing you what has been marked as Exhibit 21.

Q. Have you ever seen this before?

A. Yes.

* * * * *

[Q.] So is it true that Powerex was the subject of a criminal investigation?

A. Technically I don't know whether it was a criminal or civil, but I guess it was criminal. We were investigated by the Competition Bureau of Canada.

Q. And what is the Competition Bureau of Canada?

A. It is an entity established to investigate matters of fair competition as defined under the Competition Act.

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[178]

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Q. Have there been any other investigations of Powerex by any government agency or entity that you're aware of?

A. Not formal ones.

* * * * *

[179]

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Q. What government regulatory bodies, be they of the government of Canada as a whole or a political subdivision thereof, have any sort of regulatory jurisdiction over Powerex?

A. The National Energy Board.

Q. And what is its charge?

A. Its charge is to regulate the export of energy from Canada, and it also has regulatory authority over I think inter-provincial and international transmission lines.

Q. Does it regulate Powerex's sales of energy outside of Canada, export of energy?

A. Yes.

Q. And what is it allowed to do with respect to Powerex in that regard? Prohibit sales? You need its permission to make sales? Can you give me some idea?

A. We have blanket authorization in terms of quantity. The National Energy Board also requires us to make power available to Canadian purchasers on the same terms and conditions as it makes it available to non-Canadian purchasers. And contracts over a certain length need National Energy Board approval.

Q. And does the commission have jurisdiction over non-governmental energy companies in Canada as well?

[180] A. Yes.

Q. Are the regulations any different with respect to one versus the other?

A. No. The other area that we're regulated by is the Energy Removal Certificate process in British Columbia which, in many respects, mirrors the National Energy Board regulations.

Q. And is Powerex treated any differently under that regulatory regime than any privately-held company would be?

A. No.

* * * * *

[183]

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Q. What is Powerex's role in actually providing that power to Seattle?

A. We schedule it, and we have the transmission arrangement in our name, which allows us to optimize the value for the Province.

Q. How does Powerex do that?

A. By utilizing the unused portion. In order to deliver 230 megawatts in over just a few hours, transmission has to be reserved for the whole year.

Q. Could you keep talking, please? Because I don't get it yet.

A. Well, if you have to deliver 230 megawatts on demand – and that's the nature of the requirement. Seattle can call on that at any time. But there are a limited number of hours that they can call on it because of the relationship between the fuel and the actual [184] generating capacity.

But to ensure that they can get it when they want it, you have to have the firm transmission in place. For the rest of the hours, some 90 percent of the hours, that transmission was going un-utilized.

Q. And Powerex does what again?

A. Powerex makes use of that transmission in a way that reduces the overall cost of the Province's obligation to Seattle.

Q. All right. I don't want to misstate your testimony. I just want to make sure I understand. So BC Hydro purchases 24/7 firm transmission capacity, and Powerex resells on the market the 90 percent of it that's not needed to fulfill BC's obligations under the Skagit Treaty?

A. Powerex purchases the transmission.

Q. Okay. And how is – what is the financial arrangement, if any, between BC Hydro and Powerex with respect to the Skagit River Treaty?

A. There is none. They have simply assigned the requirements under the Treaty to Powerex to schedule the power.

* * * * *

[186]

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Q. No. 7, "Whether Powerex has exercised regulatory authority delegated by any government," does Powerex itself possess any regulatory authority as opposed to being subject to regulation?

A. No.

* * * * *

[187]

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Q. Are Powerex's employees, aside from the outside directors, all selected within Powerex, or does anyone outside of Powerex select them?

A. They're all selected by Powerex.

* * * * *

[188]

* * * * *

Q. I believe you said that the Canadian Entitlement power is about 15 percent of Powerex's total sales –

A. Yes.

Q. – is that right?

But that total sales number would include all of the sales you make as part of your total trading volume; is that correct?

A. Yes.

Q. In the course of this exchange you had mentioned asset positions. Can you tell me what you meant by that?

A. Contracts that we have in – well, I think I was referring to that in the context of some other traders that don't have specific assets, but we have the assets that Hydro operates on behalf of the government, and we have some contracts that are the equivalent of positions at various trading points.

Q. And is the Canadian Entitlement power an asset as well?

A. Yes.

Q. So when you say "asset positions," you mean [189] power that is transferred under some arrangements to Powerex in order to sell into the market; is that right?

A. Correct.

Q. And what percentage of your asset positions is the Canadian Entitlement power?

A. Probably 80 percent.

Q. Thank you.

A. In relation to the total volume of purchases. If we put it in the context of the asset positions of the Province and the capability of BC Hydro system, it's, again, on the order of 15 to 20 percent, but . . .

Q. Could you take a look at Exhibit 13 for a moment? Mr. Himmelstein asked you a couple of questions about the statement in the July 17th cover letter –

A. Yes.

Q. – that says that ". . . Powerex would not be a public utility if it acts at arms-length from BC Hydro"?

A. Correct.

Q. Is the use of transfer pricing one of the ways in which Powerex attempts to act at arm's length to BC Hydro?

A. It's one of the ways that Powerex acts at arm's length from BC Hydro.

Q. And you also act at arm's length from BC Hydro [190] in that you make nondiscriminatory market-rate payments for transmission?

A. I think there are a couple of concepts mixed up there.

Q. Sorry.

A. But we act at arm's length in the sense that we have to purchase transmission from BC Hydro on the same basis as any other player in the marketplace.

Q. But, in fact, the document that's – the export trade report is the partial response to this July 17th letter you testified; is that right?

A. Yes. What I meant by that was that the specifics of the arm's length relationship I think covers only part of the request for a Report on Export Trade.

Q. And in the Report on Export Trade at page 2, in the second paragraph, BC Hydro discussed – I'm sorry. Let's go back to paragraph 1. In paragraph 1, BC Hydro talks about the fact that Powerex as a transmission user is treated the same as any third party, correct?

A. Yes.

Q. And then it goes on to discuss the, quote, "very close" relationship between Powerex and the Power Supply Group within BC Hydro –

A. Yes.

[191] Q. – when it comes to the optimization of generation assets.

A. Um-hm.

Q. And for the optimization of generation assets, Powerex is not intended to be working at arm's length from BC Hydro?

A. No. The Power Supply Group and Powerex are intended to operate very closely together to maximize the value for the Province.

Q. Could you take a look at Exhibit 18, please, which is the Articles of Incorporation. And take a look again at Section 3.1 which is the paragraph I believe you were discussing with Mr. Himmelstein.

A. Yes.

Q. Correct me if I'm wrong, but I think you testified that – and I think I'm using your word here – "instruments," such as selling shares to any persons or granting options on the shares of Powerex, are not available to the Powerex board?

* * * * *

[A.] What I said was that technically, under the Company Act, that those instrumentalities are available, but practically they are not.

[Q.] And can you tell us [192] practically why they're not available?

A. Because the government wouldn't permit us to do it on our own without having approval by the government.

Q. What is your belief about what would happen if the Powerex board tried to sell shares to an entity that hadn't been approved by the Province?

* * * * *

[A.] They would be removed.

* * * * *

[193]

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Q. So the purchase price that you pay to the Province affects Powerex's trading profits; is that correct?

A. Yes, but I'm not sure how it works through the financial statements. I'm not sure whether they're kept completely separate or not. Quite frankly, I haven't informed myself about that.

The transfer pricing agreement – the assignment agreement and pricing thereunder is intended to capture as much for the Province as possible directly and leave as little over for consolidation into BC Hydro revenue as a means of capturing the economic rent directly by the government as opposed to the ratepayer mechanism that is otherwise utilized to distribute benefits from BC Hydro and Powerex operations.

* * * * *

[Counsel name/address blocks omitted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding	Nos. CV 02-0990-RHW
Special Title (Rule 1550(b))	CV 02-1000-RHW
	CV 02-1001-RHW

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

This Document relates To:

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

Duke Energy Trading and Marketing, LLC, et al. v.
Arizona Public Service Company, et al.

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

POWEREX'S CORP.'S NOTICE OF LODGMENT IN SUPPORT OF CROSS-DEFENDANTS' POWEREX CORP.'S SUPPLEMENTAL BRIEF IN SUPPORT OF SUBJECT-MATTER JURISDICTION

TO ALL PARTIES, THEIR COUNSEL OF RECORD, AND TO THE HONORABLE COURT:

PLEASE TAKE NOTICE that Cross-defendant Powerex Corp. hereby lodges the following exhibits referenced in Powerex Corp.'s Supplemental Brief in Support of Subject-Matter Jurisdiction.

Exhibit	Title
	* * * * *
4.	Letter from Honourable Jack Davis, Minister, to Larry Bell, Chairman and Chief Executive Officer, BC Hydro, dated November 4, 1988.

Dated: September 3, 2002

[Signature/address block omitted]

EXHIBIT 4

[Seal omitted]

Province of British Columbia OFFICE OF THE MINISTER	**Ministry of Energy, Mines and Petroleum Resources**	**Parliament Building Victoria British Columbia**

November 4, 1988

Mr. L. I. Bell
Chairman & Chief Executive Officer
B.C. Hydro
21st Floor
970 Burrard Street
Vancouver, B.C.
V6Z 1Y3

Dear Larry:

Cabinet has decided that we should provide a single window agency to be responsible to market the export of power outside the province and that this entity should be a wholly owned subsidiary of B.C. Hydro.

Would you please proceed to incorporate the Export Agency.

Yours truly,

/s/ JACK DAVIS

Honourable Jack Davis
Minister

[Counsel name/address block omitted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding
Special Title (Rule 1550(b))

Nos. CV 02-0990 (RHW)
CV 02-1000 (RHW)
CV 02-1001 (RHW)

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

AND RELATED CROSS-ACTIONS

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

Duke Energy Trading and Marketing, LLC, et al. v.
Arizona Public Service Company, et al.

Reliant Energy Services, Inc., et al. v.
Arizona Electric Power Cooperative, Inc., et al.

REPLY DECLARATION OF BARRY R. HIMMELSTEIN IN SUPPORT OF MOTION TO REMAND AND MOTION TO STRIKE AND/OR SEVER CROSS-COMPLAINTS

I, BARRY HIMMELSTEIN, declare and state:

1. I am a partner in the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP, counsel for plaintiff Oscar's Photo Lab and Mary L. Davis in these coordinated actions. I have personal knowledge of the facts set forth herein, and could and would testify competently thereto if called upon to do so.

2. Attached hereto are true and correct copies of the following documents:

* * * * *

Exhibit 2 Transcript of the Deposition of Ken R. Spafford taken on August 27, 2002

* * * * *

Exhibit 4 Exhibit 13 to the Deposition of Kenneth Grant Peterson taken on August 21, 2002 (Letter from British Columbia Utilities Commission dated July 17, 2000)

* * * * *

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed this 3rd day of September, 2002 at San Francisco, California.

Dated: September 3, 2002

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

By: /s/ BARRY R. HIMMELSTEIN

Barry R. Himmelstein

[Address block omitted]

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding Special Title (Rule 1550(b)) — No. CV 02-0990-RHW

WHOLESALE ELECTRICITY ANTITRUST CASES I & II

This Document relates to:

ALL ACTIONS

DEPOSITION OF KEN R. SPAFFORD

Tuesday, August 27, 2002

* * * * *

[3]

* * * * *

KEN R. SPAFFORD

called as a witness by the Defendants, who, having been first duly sworn, was examined and testified as follows:

* * * * *

[66]

* * * * *

[Q.] . . . Let's go back to the Exhibit 4, the 2001 Annual Report.

Q. If you'd go to the page marked 880 at the bottom. It says, ". . . we actually ended up as a net importer for the year . . ."

That refers to the year ended March 31st, 2001?

A. Yes.

Q. And where in this document – and I suggest the possibility of page 939 – could I see what the net is for BC Hydro in terms of imports and exports? By "BC Hydro" I mean consolidated reporting.

Where are the numbers in this document that show that BC Hydro ended up as a net importer for the year?

A. Page 939 will not tell you that.

Q. What will?

A. I suspect it's somewhere in the text, but exactly where, it would take me some time to find.

Q. Would any of these numbers, these operating statistics, or anything in the financial statements reflect that? And please do take your time, because this is about the only question I have for you.

(Witness reviews document)

[A.] If you look at page 908. The [67] last paragraph on that page, first sentence:

> "The lower level of water inflows during the year contributed to BC Hydro being in a net import position of approximately 1700 GW-h for the year"

I think that's the most accurate description of the net import position for that fiscal year.

[Q.] And do you know if BC Hydro was in a net import or export position for fiscal year 2002?

A. My recollection is, is that we were a net importer for fiscal 2002, and that would be reflected in our 2002 Annual Report, which is available.

Q. And how about 2000?

A. Again, I can't give you the precise numbers, but from the information in this document it would appear that we were in a slight export position in the year 2000.

Q. Slight.

A. That's correct. And the numbers on which I base that are the – electricity trade sales are shown on page 939. In this case they show an electricity trade sale of 23410, 23,410.

And on page 908 it shows the category of "Other energy purchases," which includes a lot of the energy [68] that's purchased for the electricity trade. And it shows a number there of 21,188, which indicates that there was slightly more sales than there were purchases.

Q. What does the acronym "IPP" refer to?

A. IPP means purchases from independent power producers, which are typically generators in the Province of BC.

Q. So if we go back to 939, is there any math you could do on the numbers on that page which would equal the 1700 gigawatt net import position shown on page 908?

A. It comes close, but not exactly. The math that I would do would be to compare the "Other energy purchases" for 2001 of 25,893.

Q. I'm sorry, what column and line?

A. That's under "Other energy purchases for 2001 in gigawatt hours. So that's the third numerical column in that, 25,893.

* * * * *

[Q.] Oh, I'm sorry. One more time, if you wouldn't mind.

[A.] Okay. If I compare the "Other energy purchases" of 25,893 –

[Q.] Yes.

[A.] – for the year 2001, and compare [69] that to 23,900 of electricity trade sales.

[Q.] That's on 939.

[A.] That's on 939. The difference between those is approximately 2000 gigawatt hours, which is roughly the same as the 1700 indicated at the bottom of page 908.

[Q.] So is it a correct statement that on average the BC Hydro system does not have, on a net basis, excess supplies for export?

A. That's generally been the case in the most recent years, yes, the last three years, for example.

If you go back in time – which, unfortunately my experience with Hydro allows me to do sometimes – historically we have been net exporters.

Q. How far back in time?

A. I've been with Hydro for 29 years, so . . .

Q. How far back in time were they net exporters?

A. Certainly during the early part of the 1980s – well, throughout the eighties and the early part of the nineties we were net exporters. Towards the end of the nineties we were approximately in load and resource balance, and for the last three years or so have been – or last two years have been net importers.

EXHIBIT 4

[Address and Seal omitted]

BRITISH COLUMBIA UTILITIES COMMISSION

LETTER NO. L-34-00

ROBERT J. PELLATT
COMMISSION SECRETARY

Log No. 3602

VIA FACSIMILE July 17, 2000

Mr. R. Brian Wallace
Bull, Housser & Tupper
Barristers & Solicitors
3000 Royal Centre,
P.O. Box 11130
2500-1055 West Georgia Street
Vancouver, B.C. V6E 3R3

Mr. R.G. Gathercole
Executive Director
BC Public Interest Advocacy Centre
815-815 West Hastings Street
Vancouver, B.C. V6C 1B4

Dear Sirs:

Re: British Columbia Hydro and Power Authority ("B.C. Hydro") Report on Export Trade
BCUC Staff Information Request

In Commission Letter No. L-15-00, the Commission directed B.C. Hydro to file a report related to its electricity trade activities, in part, since actions taken by B.C. Hydro at this time can have significant consequences to ratepayers after the expiry of the rate freeze. The Commission noted that electricity trade was a contentious issue at B.C. Hydro's last revenue requirements hearing, and that the Commission's forecast of electricity trade revenues was made using less than adequate information.

Commission Letter No. L-15-00 directed B.C. Hydro to fully describe its export trade activities in the following three areas:

The structure of agreements between B.C. Hydro and Powerex;

Financial information; and

The rate stabilization account.

B.C. Hydro responded with the enclosed Report on Export Trade dated June 30, 2000. Since the request for the Report on Export Trade evolved out of a complaint by the Joint Industry Electricity Steering Committee ("JIESC") and the Consumers' Association of Canada (B.C.) et al. ("CAC (B.C.) et al."), the Commission is providing an opportunity for these parties to comment on B.C. Hydro's report and the degree to which it provides the information requested in Commission Letter No. L- 15-00. Specifically, the Commission encourages JIESC and CAC (B.C.) et al. to comment on the following issues:

1. The Structure of Agreements between BC. Hydro and Powerex

In Commission Letter No. L-15-00, the Commission acknowledged that Powerex would not be a public utility if it acts at arms-length from B.C. Hydro. The Commission requests comments from the JIESC and CAC (B.C.) et al. on the relationship between Powerex and B.C. Hydro and any implications for the Commission's involvement in monitoring the activities of B.C. Hydro and Powerex.

[Address and Seal omitted]

BRITISH COLUMBIA UTILITIES COMMISSION

LETTER NO. L-15-00

ROBERT J. PELLATT
COMMISSION SECRETARY

Log No. 2973

VIA FACSIMILE April 6, 2000

Mr. Ray Aldeguer
Senior Vice President
Legal, Regulatory Affairs and General Counsel
British Columbia Hydro and Power Authority
17th Floor, 333 Dunsmuir Street
Vancouver, B.C. V6B 5R3
Dear Sirs:

Re: British Columbia Hydro and Power Authority
Commission Letter No. L-7-00
Report on Export Trade

The Commission has considered your submissions of February 29, 2000 and March 29, 2000 in response to Commission Letter No. L-7-00. The Commission has also considered the submissions of the Joint Industry Electricity Steering Committee and the Consumers' Association of Canada (B.C.) et al. on this issue.

The Commission agrees with B.C. Hydro that the pending legislation to extend the rate freeze until September 30, 2001 will postpone any revenue requirements review of the Utility during this fiscal year. Therefore, the requirement to obtain export trade information could be delayed if this information was needed solely for rate setting purposes. The Commission also accepts that Powerex is not a public utility if it acts at arms-length from B.C. Hydro, and as such the focus of further reporting by B.C. Hydro should be on the nature of the transactions entered into by B.C. Hydro with its non-regulated subsidiary. However,

as recently affirmed by Order in Council No. 493 (dated March 30, 2000) amending Special Direction No. 8, the Commission is directed to calculate B.C. Hydro's return on equity using projections of consolidated net income that include an amount of electricity trade income consistent with the Commission's forecast of annual net export revenue under average water conditions.

The Commission also agrees with the submissions of the customer groups that the actions of B.C. Hydro with respect to electricity trade are very important to the welfare of ratepayers. In its most recent correspondence, B.C. Hydro indicates that a modified Rate Stabilization Account is to be established by the government through an Order in Council to change Special Directive No. 2 to B.C. Hydro. Order in Council No. 494, dated March 30, 2000, establishing Special Directive No. 4 to B.C. Hydro, sets out the operation of the Rate Stabilization Account for the dual purpose of helping B.C. Hydro achieve its targeted return on equity and keeping rates stable despite stream flow fluctuations. Therefore, actions taken by B.C. Hydro at this time, can have significant consequences to ratepayers after the expiry of the rate freeze. The ways in which B.C. Hydro manages its reservoirs in relation to the water flows into those reservoirs have the greatest single operational impact on the rates paid by domestic customers.

The Commission has an ongoing responsibility pursuant to Sections 23, 24, and 43 of the Utilities Commission Act to keep itself informed about B.C. Hydro's actions with respect to electricity trade. Electricity trade activities of B.C. Hydro have not been reviewed since 1994 and the nature of electricity markets has changed dramatically since that time. In its February 2000 Interim Report for the Nine Months ended December 31, 1999, B.C. Hydro stressed how the evolution of electricity markets had created a substantial opportunity for the Utility to purchase electricity from external sources when prices are low and store water behind its reservoirs to later utilize for export trade activity when market prices are high.

The Commission therefore directs B.C. Hydro to submit a report to the Commission by June 30, 2000 fully describing its export trade activities in the following three areas:

1. The Structure of Agreements between B.C. Hydro and Powerex

   B.C. Hydro is to clearly explain the nature of the transactions with respect to electricity trade between B.C. Hydro and its subsidiary Powerex. B.C. Hydro should also clearly explain how the content of each agreement entered into between them affects the structure of the electricity trade arrangements between the two parties. This section of the report should demonstrate the extent to which B.C. Hydro is safeguarding its domestic customers' interest in its arrangements with Powerex. For instance, the report should explain whether or not B.C. Hydro and Powerex are acting at arms-length. The Utility should also detail how it is safeguarding the interests of its domestic ratepayers through the consolidation of Powerex's revenues for revenue requirement purposes, or by transfers from Powerex to B.C. Hydro prior to export sales. The information provided should explain the nature of the agreements without disclosing any commercially sensitive information with respect to export trade.

2. Financial Information

   B.C. Hydro is to demonstrate, through the provision of historic and current financial information, how the export trade activities between B.C. Hydro and Powerex benefit domestic ratepayers fairly for the storage and generation assets of B.C. Hydro. The Commission recognizes B.C. Hydro's concern with respect to disclosing commercially sensitive information, but the Commission requires B.C. Hydro to provide adequate data to fully inform the Commission on the conduct of its public utility business with respect to electricity trade. B.C. Hydro should respond to those matters addressed

in Commission Letter No. L-7-00 and provide financial details to the Commission without disclosing any commercially sensitive information.

3. The Rate Stabilization Account

To better understand the impacts on ratepayers, B.C. Hydro is to detail the operation of the Rate Stabilization Account for Fiscal Year 1999/00, and its expected operation for Fiscal Years 2000/01 and 2001/02. The report should provide details on the state of B.C. Hydro's reservoirs and the expected water inflows based upon up-to-date snowpack information and forecasts of low, average and high precipitation for the remainder of calendar year 2000 and 2001 up to September 2001. Depending on the nature of the transactions between B.C. Hydro and Powerex, storage rights and water inventories held by Powerex at different times over the period should be identified. B.C. Hydro should then provide its load resource analysis to indicate domestic demand and export trade activities throughout the period to demonstrate how domestic customers will be protected during the rate freeze period and how B.C. Hydro will be well positioned to protect customers after the end of the rate freeze. B.C. Hydro should indicate if there are any conditions under which the Rate Stabilization Account balance will be used for any purpose other than domestic customer rate protection and protection of payments to the provincial government pursuant to Sections 5, 6, and 7 of Special Directive No. 4.

Electricity trade was a contentious issue at B.C. Hydro's last revenue requirements hearing, and the Commission's forecast of electricity trade revenues was made using less than adequate information. Since 1994, B.C. Hydro's net income from electricity trade has more than tripled, its revenues from electricity trade are approaching one-third of its total revenues, Powerex has become a sophisticated trader, and markets for electricity trade have become more accessible, diverse, and complex. The Commission has an

ongoing obligation to ratepayers, to B.C. Hydro, and to the Lieutenant Governor in Council to gain a better understanding of B.C. Hydro's electricity trade activities and accounting practices.

Yours truly,

Original signed by:

Robert J. Pellatt

WJG/mmc

cc: Mr. Richard Gathercole
Executive Director
B.C. Public Interest Advocacy Centre
Mr. R. Brian Wallace
Bull, Housser & Tupper Barristers & Solicitors

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding
Special Title (Rule 1550(b))

Nos. CV 02-0990-RHW
CV 02-1000-RHW
CV 02-1001-RHW

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

This Document relates to:

ALL ACTIONS

RELIANT ENERGY SERVICES, INC., ET AL.,
Defendants and Cross-Complainants,

v.

ARIZONA ELECTRIC POWER COOPERATIVE, INC., ET AL.,
Cross-Defendants.

ORDER DENYING EX PARTE APPLICATIONS TO STAY REMAND ORDER AND SETTING HEARING ON MOTION FOR RECONSIDERATION

Before the Court is Defendants Duke Energy's and Reliant Energy's *Ex Parte* Application for Stay of the Court's Remand Order (Ct. Rec. 201) and Cross-Defendant Powerex Corp.'s ("Powerex") *Ex Parte* Application for Stay of the Court's Remand Order (Ct. Rec. 204). Despite the rather extensive briefing submitted on the stay issue, the question presented to the Court by the parties' applications is rather simple: can the Court stay its remand order pending appeal when the premise for the Court's order was that it did not have subject matter jurisdiction over the removed action?

The starting point for the inquiry begins with 28 U.S.C. § 1447(d), which provides: "An order remanding a case to State court from which it was removed is not reviewable on appeal or otherwise." The Supreme Court has held that this provision is to be interpreted in concert with § 1447(c), such that remand orders issued under § 1447(c) and "invoking the grounds specified therein" are immune from review. *See Thermtron Prods. Inc. v. Herrnansdorfer*, 423 U.S. 336, 345-45 (1976), *abrogated on other grounds by Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996). Lack of subject matter jurisdiction is one ground for remand under § 1447(c). *Cf. Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127-28 (1995) ("As long as a district court's remand is based on . . . lack of subject-matter jurisdiction – the grounds for remand recognized by 1447(c) – a court of appeals lacks jurisdiction to entertain an appeal of the remand order under § 1447(d).").

In this regard, staying an order remanding a case for lack of subject matter jurisdiction violates the aim and purpose of 28 U.S.C. § 1447(d). For this reason, courts have expressly stated that a stay of a remand order issued under the imprimatur of § 1447(c) is prohibited. *See Volvo of America Corp. v. Schwarzer*, 429 U.S. 1331, 1333 (1976) (denying application for stay of remand order because "while the District Court may have been wrong in its analysis, it clearly stated, citing to section 1447(c), that it was without jurisdiction."); *Kromer v. McNabb*, 308 F.2d 863, 865-66 (10th Cir. 1962) (application for stay of remand order based on lack of subject matter jurisdiction denied "as contrary to the policy and terms of 28 U.S.C. 1447(d)").

That being said, an exception to the application of § 1447(d) exists. Reviewable, non-§ 1447(c) remands constitute a narrow class of cases in which a court may review a remand order if the district court clearly and affirmatively relies on a non-§ 1447(c) basis. *See Heaton v. Monogram Credit Card Bank of Georgia*, 231 F.3d 994, 997 (5th Cir. 2000). In this regard, the Defendants and

Cross-Defendant Powerex contend that the Court's ruling on the immunity status of the parties under the FSIA is a "separable order" reviewable apart from the decision to remand.

The notion that certain orders may be reviewed on appeal if such orders are "separable" from the order of remand originated with the Supreme Court's decision in *City of Waco v. United States Fidelity & Guaranty Co.*, 293 U.S. 140 (1934).[1] In determining whether an order is "separable" and, thus, can be afforded appellate review under *City of Waco*, courts have focused on whether the underlying findings and determinations on which a remand order is based (1) have significance or consequences beyond jurisdictional issues; and (2) will not be subject to review in the state court proceedings after remand. *See, e.g., Aquamar v. Del Monte Fresh Produce*, 179 F.3d 1279, 1286 (11th Cir. 1999).

Yet, there is no separable order at issue here. A plain and common sense review of the Court's remand order shows that the Court only stated a § 1447(c) basis for remand (Ct. Rec. 202, stating, "The issue hinges, then, on the Court's jurisdictional authority to hear the removed claims."). The Court's findings that (1) Powerex is not a foreign sovereign for purposes of the FSIA; (2) that BPA and WAPA possess sovereign immunity; and (3) that the

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[1] In *City of Waco*, in a single order, the district court denied plaintiff's motion to remand the entire case, but granted a motion to dismiss a cross-action. Because this dismissal eliminated diversity jurisdiction, the court remanded the remainder of the case for lack of subject matter jurisdiction. 293 U.S. at 142. The Supreme Court eventually determined that the remand order did not preclude appellate review of the dismissal order, stating:

> True, no appeal lies from the order of remand; in logic and in fact the decree of dismissal preceded that of remand and was made by the District Court while it had control of the cause. Indisputably, this order is the subject of an appeal; and, if not reversed or set aside, is conclusive upon the [city of Waco].

Id.

derivative jurisdiction doctrine bars the Court from asserting jurisdiction over the cross-claims against the United States upon removal were not collateral, but integral to the Court's jurisdictional determination. *Cf. Hansen v. Blue Cross of Calif.*, 891 F.2d 1384, 1387-88 (9th Cir. 1989) (stating "[appellant] fails to demonstrate how the district court's legal decision was apart from the question of subject matter jurisdiction as required to fall within the exception to nonreviewability. . . . The district court's decision . . . rather than being apart from the question of subject matter jurisdiction, was necessary to determine whether such jurisdiction existed."). In light of the Court's ultimate conclusion that the entire case has to be remanded for lack of subject matter jurisdiction, the Court's determination that the Cross-Defendants are immune under the FSIA is a jurisdictional finding. As such, granting a stay of remand under the "separable order" exception to nonreviewability is inappropriate in these circumstances.

In this regard, the cases cited by Defendants and Cross-Defendant Powerex supporting their "separable order" argument are distinguishable from this case in one major regard: all of those cases involved actual entry of a dismissal order in conjunction with, or prior to, entry of the remand order, or remands that were reviewable because they were based on something other than lack of jurisdiction. *See, e.g., City of Waco*, 293 U.S. 140 (1934) (district court entered order of dismissal along with remand order); *Gallea v. United States*, 779 F.2d 1403 (9th Cir. 1986) (district court entered order dismissing government as party, then remanded case). Perhaps not surprisingly, then, it is no shock that Cross-Defendants have asked this Court to clarify its order so as to dismiss BC Hydro from the case based on the Court's finding that BC Hydro is immune from suit.[2] *See* December 17, 2002 letter from

[2] The United States, likewise, has made a similar motion, asking that the Court clarify its remand order and dismiss it from the case based on the Court's finding that it is immune from suit. (Ct. Rec. 211.)

Douglas M. Butz, counsel for B.C. Hydro, to this Court. If the Court were to clarify its Order and dismiss B.C. Hydro, the Court's remand order would, arguably, be reviewable under the "separable order" exception.

It would be improper, however, for the Court to grant Cross-Defendant B.C. Hydro's request to dismiss it from the case at this point. Several courts have held that when a district court has determined that it lacks subject matter jurisdiction over a removed claim, the appropriate procedure is to remand the claim to state court, rather than dismiss the claim. *See, e.g., Smith v. Wisconsin Dept. of Agriculture, Trade, & Consumer Prot.*, 23 F.3d 1134, 1138-39 (7th Cir. 1994). The Fourth Circuit made this point clear in *Roach v. West Virginia Regional Jail & Corr. Facility Auth.*, 74 F.3d 46, 48-49 (4th Cir. 1996), stating:

> Remand to state court following removal is governed by 28 U.S.C.A. § 1447, and the statute is clear and unambiguous. "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, *the case shall be remanded.*" 28 U.S.C.A. § 1447(c) (emphasis added). The plain language of § 1447(c) gives "no discretion to dismiss rather than remand an action" removed from state court over which the court lacks subject-matter jurisdiction.

(Emphasis in the original; internal citations omitted). Thus, applying the above principles, it is evident that it would be error for the Court to dismiss Cross-Defendant B.C. Hydro from the case, rather than simply remanding. Section 1447(c) requires the Court to simply remand the action to state court.

Defendants also request the appointment of a special process server to effect service on Cross-Defendant Comision Federal de Electricidad. Again, having already found that the Court lacks subject matter jurisdiction over this case, it is inappropriate to grant Defendants' service request as well.

Accordingly, **IT IS HEREBY ORDERED**:

1. Defendants Duke Energy's and Reliant Energy's *Ex Parte* Application for Stay of the Court's Remand Order **(Ct. Rec. 201)** and Cross-Defendant Powerex Corp.'s ("Powerex') *Ex Parte* Application for Stay of the Court's Remand Order **(Ct. Rec. 204)** are **DENIED**.

2. Cross-Defendant Powerex's Motion for Reconsideration **(Ct. Rec. 214)** shall be heard without oral argument on February 7, 2003. All responses to the motion for reconsideration are to be filed no later than January 31, 2003. Cross-Defendant Powerex's reply shall be filed no later than February 5, 2003.

IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel.

DATED this 24th day of January, 2003.

/s/ ROBERT H. WHALEY
Robert H. Whaley
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Coordination Proceeding
Special Title (Rule 1550(b))

Nos. CV 02-0990-RHW
CV 02-1000-RHW
CV 02-1001-RHW

WHOLESALE ELECTRICITY
ANTITRUST CASES I & II

This Document relates to:

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RELIANT ENERGY SERVICES, INC., ET AL.,
Defendants and Cross-Complainants,

v.

ARIZONA ELECTRIC POWER COOPERATIVE, INC., ET AL.,
Cross-Defendants.

ORDER DENYING UNITED STATES' MOTION FOR CLARIFICATION OF ORDER GRANTING MOTION TO REMAND

Before the Court is Cross-Defendant United States' Motion for Clarification of Order Granting Motion to Remand. (Ct. Rec. 211.) The United States maintains that implicit to the holding in the Court's Remand Order of December 17, 2002 (Ct. Rec. 202) is that no jurisdiction exists over BPA and WAPA, and, thus, dismissal of the federal cross-defendants, rather than remand to state court, is warranted.

It would be improper, however, for the Court to grant Cross-Defendant United States' request to dismiss the federal defendants from the case at this point. The reasoning the Court employed in its Order Denying Ex Parte

Application of Remand Order applies with equal force here. (Ct. Rec. 202). As noted in the previous order, several courts have held that when a district court has determined that it lacks subject matter jurisdiction over a removed claim, the appropriate procedure is to remand the claim to state court, rather than dismiss the claim. *See, e.g., Smith v. Wisconsin Dept. of Agriculture, Trade, & Consumer Prot.*, 23 F.3d 1134, 1138-39 (7th Cir. 1994). The Fourth Circuit made this point clear in *Roach v. West Virginia Regional Jail & Corr. Facility Auth.*, 74 F.3d 46, 48-49 (4th Cir. 1996), stating:

> Remand to state court following removal is governed by 28 U.S.C.A. § 1447, and the statute is clear and unambiguous. "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, *the case shall be remanded*." 28 U.S.C.A. § 1447(c) (emphasis added). The plain language of § 1447(c) gives "no discretion to dismiss rather than remand an action" removed from state court over which the court lacks subject-matter jurisdiction.

(Emphasis in the original; internal citations omitted.) Thus, applying the above principles, it is evident that it would be error for the Court to dismiss the federal defendants from the case, rather than simply remanding. Section 1447(c) requires the Court to simply remand the action to state court.

Accordingly, **IT IS HEREBY ORDERED** that Cross-Defendant United States' Motion for Clarification of Order Granting Motion to Remand (Ct. Rec. 211) is **DENIED**.

IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel.

DATED this 31st day of January, 2003.

/s/ ROBERT H. WHALEY
Robert H. Whaley
United States District Judge

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

WILLIAM K. SUTER
Clerk of the Court
(202) 479-3011

January 19, 2007

Mr. David C. Frederick
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.
1615 M St eet, N.W.
Suite 400
Washington, DC 20036

Re: Powerex Corp.
v. Reliant Energy Services, Inc., et al.
No. 05-85

Dear Mr. Frederick:

The Court today entered the following order in the above-entitled case:

The motion of Province of British Columbia for leave to file a brief as *amicus curiae* is granted. The motion of Government of Canada for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is granted limited to Question 1 presented by the petition. In addition, the parties are directed to brief and argue the following Question: Whether the court of appeals had jurisdiction to review the district court's remand order, notwithstanding 28 U. S. C. Sec. 1447(d).

Sincerely,

/s/ WILLIAM K. SUTER
William K. Suter, Clerk